IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

UNITED STATES OF AMERICA, PETITIONER,

v.

STANDARD OIL COMPANY OF NEW JERSEY ET AL., DEFENDANTS

DEFENDANTS' TESTIMONY

On behalf of the defendants:

Mr. JOHN G. MILBURN, Mr. MORITZ ROSENTHAL
Mr. JOHN S. MILLER, Mr. M. F. ELLIOTT, Mr. MARTIN CAREY, Mr. F. L. CRAWFORD, Mr. DOUGLAS CAMPBELL

On behalf of the petitioner:

Mr. FRANK B. KELLOGG, Mr. C. B. MORRISON
Mr. J. HARWOOD GRAVES

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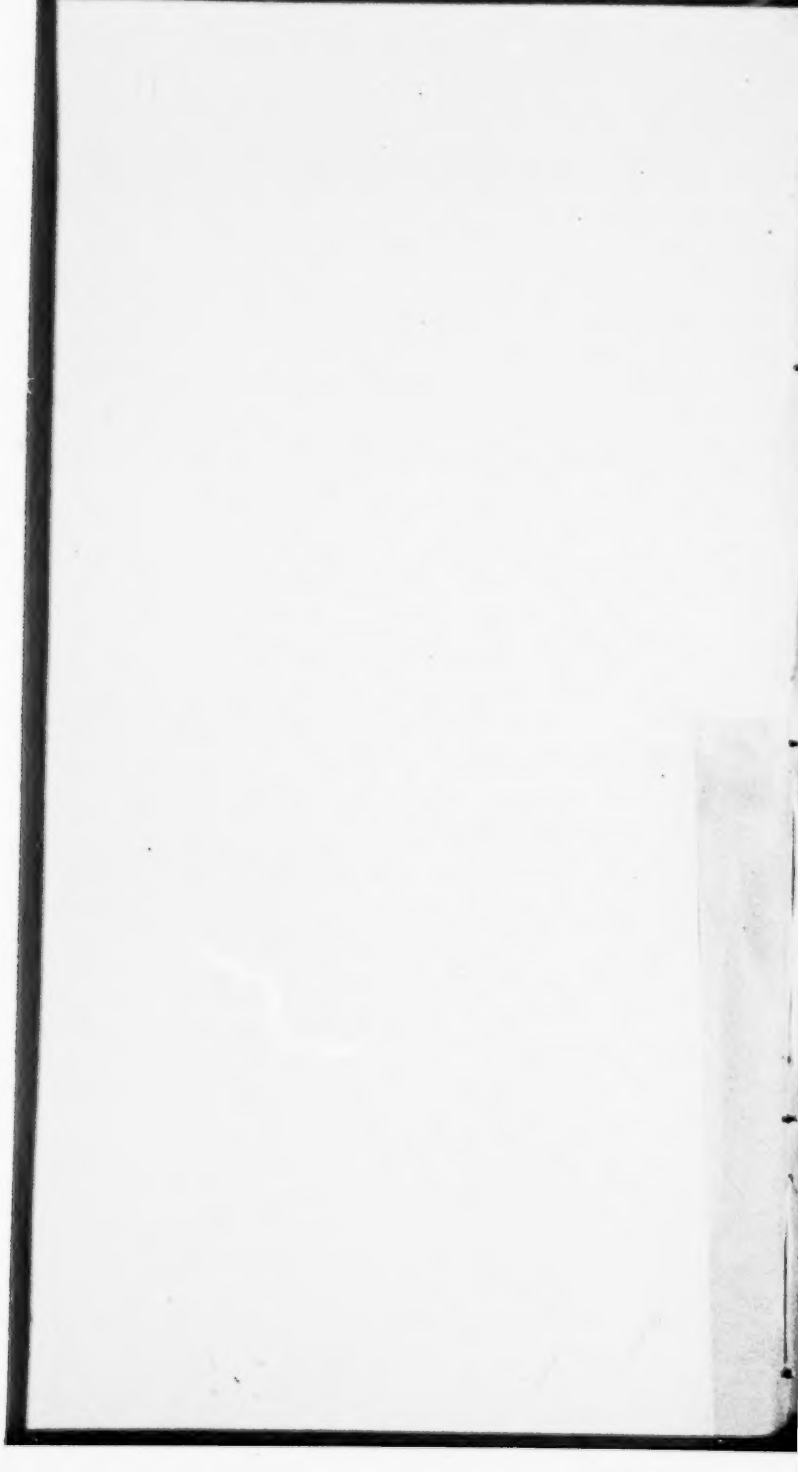

7649 ROOM 722 CUSTOM-HOUSE, NEW YORK CITY,
Thursday, June 25, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg and Mr. Charles B. Morrison; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. F. L. Crawford, and Mr. W. Cleveland Runyon.

THEODORE H. CURTIS, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is your full name?—A. Theodore H. Curtis.

Q. Where do you live?—A. Louisville, Kentucky.

Q. How long have you lived there?—A. Since January 1, 1902.

Q. What is your occupation?—A. Superintendent of machinery, Louisville & Nashville Railroad Company.

Q. How long have you been superintendent of machinery of the Louisville & Nashville?—A. Since August 1, 1903.

Q. What was your position with the L. & N. before that?—A. Mechanical engineer.

Q. In a general way, what were your duties as mechanical engineer? Did it have anything to do with the matter of railroad lubrication?—A. It did not directly.

7650 Q. You are by profession a mechanical engineer?—A. Yes, sir.

Q. Before being with the L. & N. what road were you with?—A. The Erie Railroad.

Q. In what capacity?—A. Mechanical engineer.

Q. And there you had nothing to do with the matter of railroad lubrication?—A. Not directly.

Q. Are you the same Theodore H. Curtis who, on February 7, 1905, wrote the letter shown in volume 2, page 511, of the record in this case? [Showing printed volume to witness.] A. I didn't write that letter.

Q. Are you the Theodore H. Curtis referred to in that letter?—A. I am.

Q. You became superintendent of machinery at what time?—A. August 1, 1903.

Q. On August 1, 1903, from what company was the L. & N. Railroad getting its lubrication?—A. I couldn't say positively. I think it was the New York Lubricating Oil Company.

Mr. ROSENTHAL. It is conceded, isn't it, gentlemen, that on March 1, 1903, the New York Lubricating Company began to lubricate the L. & N.?

Mr. KELLOGG. Yes, I believe it was March 1.

Mr. HARRISON. Either March 1 or 2, I forget which.

Mr. ROSENTHAL. But it was in March, 1903?

Mr. HARRISON. Yes. I think it was dated the 2nd.

Q. Prior to August, 1903, had you any personal experience with the matter of railroad lubrication?—A. I had not.

7651. Q. So that at the time you wrote your letter to Mr. Smith, in January or February, 1905, your entire experience, so far as railroad lubrication was concerned, had been with the lubrication of the New York Lubricating Oil Company, which was lubricating the L. & N. road during that period of time?—A. Yes, sir.

Q. Since January of the year 1908, have you conducted an investigation on the L. & N. road with respect to the matter of lubrication?—A. I have instructed that one should be conducted.

Q. I show you a letter dated January 5, 1908, addressed to you as superintendent of machinery, by G. E. Evans, fourth vice-president of the L. & N. road. Please state whether you received that letter from Mr. Evans, and what you thereupon did.—A. I received this letter.

Q. And then what did you do?—A. Directed that the information be compiled.

Mr. ROSENTHAL. I offer this letter in evidence at this point.

Mr. KELLOGG. Objected to as incompetent and immaterial.

Mr. ROSENTHAL. I would like to substitute a copy for the original, Mr. Kellogg.

Mr. KELLOGG. No objection to that.

The letter last referred to was marked "Defendants' Exhibit 71," and is as follows:

7652 70555. Form 187.

"G. E. EVANS,
"*Fourth Vice-President.*

"LOUISVILLE & NASHVILLE RAILROAD COMPANY,
"OFFICE OF THE FOURTH VICE-PRESIDENT,
"*Louisville, Ky., January 5th, 1908.*

"Mr. T. H. CURTIS,
"*Supt. Machinery.*

Office of Supt. Machinery Jan. 6, 1908. L. & N. R. R. Co.

"DEAR SIR: Following is a copy of the president's letter to me, dated the 4th inst:

"'Have the results of lubrication under our present contract with the Galena-Signal Oil Company been satisfactory?

"'Is it feasible to furnish a copmarative statement of the number of hot boxes and aggregate time of delays, and comparative cost of waste with allowance for additional mileage, for the periods June 1, 1904, to June 1, 1905, and June 1, 1906, to June 1, 1907?'

"I assume that, perhaps, you will not be able to give all the information in detail, but give it as far as practicable. Let me have it as promptly as possible.

"Yours truly,
G. E. EVANS,
"Dict. *Fourth Vice-President.*"

Q. You at once caused an inquiry to be instituted?—A. Yes.

Mr. ROSENTHAL. You don't object to that letter, Mr. Kellogg, upon the ground that we have not made strict proof of the signature? I

suppose you object to it upon the ground that it is inter alios, don't you?

Mr. KELLOGG. Yes.

7653 Mr. ROSENTHAL. We can go on and make that technical proof.

Mr. KELLOGG. No; it is not necessary.

Q. Did you make any reply to Mr. Evans's letter to you, dated January 5?—A. I do not recall a personal reply.

Q. I show you a letter purporting to be signed by you, under date of January 14.—A. I did not write this letter.

Q. Did you cause it to be written?—A. On the instruction that the investigation be made and reported, it was writen.

Q. Whose signature is that?—A. I think it is Mr. Hedgecock's.

Q. Mr. Hedgecock is your chief clerk?—A. Yes, sir.

Q. What is attached to that letter of January 14?—A. A statement of cost of waste for lubrication of locomotives and cars. Do you wish it all stated—each one that is here?

Q. If you please, yes.—A. A memorandum of new cars built July 1, 1904, to March 1, 1905, and for which cost of initial packing is charged to lubrication. A statement of delays to passenger trains account hot boxes on locomotives and passenger cars, 11 months, July, 1904, to May, 1905, as compared with 11 months, July, 1906, to May, 1907.

Mr. ROSENTHAL. I offer in evidence Mr. Curtis's letter to Mr. G. E. Evans, and ask that it be marked "Defendants' Exhibit 72."

Mr. KELLOGG. Objected to as immaterial and inter alios.

Q. Now, attached to the letter which you wrote to Mr. Evans, you have certain statements, have you, that you have already

7654 designated?—A. Yes, sir.

Q. I call your attention to the first one, which is a statement showing the cost of waste for lubrication of locomotives and cars, for the years 1904 and 1905, and 1906 and 1907, on locomotives, passenger cars, and freight cars, compared by months, which statement purports to be signed by you. Please state whether or not this statement (which I shall ask to have marked "Defendants' Exhibit 73") was prepared under your direction and supervision?—A. It was.

Q. And it was prepared from what?—A. From the records of the L. & N. Company; the L. & N. official records under my supervision.

Q. I show you also a statement purporting to be a statement of the delays to passenger trains account of hot boxes on locomotives and passenger cars for the 11 months July, 1904, to May, 1905, as compared with 11 months July, 1906, to May, 1907 (which statement is marked "Defendants' Exhibit 74"). Was that also prepared under your direction and supervision from the official records of the L. & N. road?—A. It was.

Q. Your contract with the New York Lubricating Company began in March, 1903, and the contract period terminated in March, 1905. How long after March, 1905, if you know, did the L. & N. road continue using the oils of the New York Lubricating Company?—A. It continued to use these oils until the stock on hand was consumed.

Q. And do you know about when that was? Did it run
7655 along until sometime in the month of May, 1905?—A. I do not know exactly how long it was.

Q. Was it several months?—A. I should think it was several months.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibits 73 and 74.

Mr. KELLOGG. I object to them as incompetent. And I would like to ask the witness some questions.

By Mr. KELLOGG:

Q. Who made up these statements, defendants' Exhibits 73 and 74?—A. They were made up by the clerical force in our office.

Q. You never compared them yourself?—A. No, sir.

Q. Are the original records still in your office?—A. I think so.

Mr. ROSENTHAL. I have here Mr. Curtis's chief clerk, who has direct knowledge of that, if you want to examine him on it.

Q. You still have the original records from which these exhibits were made in your office, have you?—A. I think so.

Q. You have no reason to believe that you haven't, have you?—A. No.

Q. You preserve those things, don't you?—A. They are preserved.

Q. Have you the records for the year 1903?—A. I think we have.

Q. And 1902 and 1901?—A. I don't know.

Q. Have you the record from June 30, 1905, to June 30, 1906?—A. I do not know.

Q. Have you any reason to believe you haven't got it?—A.
7656 They are there unless they were destroyed by fire.

Q. When did you have a fire?—A. In June, 1905.

Q. If they were destroyed by fire, it would have burned up the 1904 statement, wouldn't it?—A. Not necessarily.

Q. Have you looked to see if you have the 1902, 1903, and 1901 statements?—A. Personally, I have not.

Q. Have you had anybody else look?—A. I directed that the information be obtained from our records.

Q. For those years?—A. Not for 1901.

Q. Did you direct that any information be obtained from July 1, 1905, to July 1, 1906?

Mr. ROSENTHAL. I think I can clear that up, if you will let me ask a question.

Q. Well, do you know?—A. I directed that the information be obtained.

Q. For what years?—A. For all that we had.

Q. All that you had?—A. All that we had at that time that you speak of.

Q. What time that I speak of?—A. Excepting the time for the fire.

Q. Now, I notice that this letter only asks for the periods from June 1, 1904, to June 1, 1905, and June 1, 1906, to June 1, 1907. You didn't ask for any other information from your records than what this letter Exhibit 71 asked for, did you?

Mr. ROSENTHAL. No; I think not. We compared the second year of the New York Lubricating Company contract with the second year of the Galena contract.

7657 Mr. KELLOGG. Yes, and you took the year that your men were in charge part of the time.

Mr. ROSENTHAL. Well, of course.

Mr. KELLOGG. Using the New York Lubricating Company's oils.

Mr. ROSENTHAL. Of course.

Mr. KELLOGG. Certainly, you did.

Q. Did you ask for any period other than the one named in this Exhibit 71?—A. I directed that that letter be answered from our records.

Q. That is all?—A. Yes, sir.

Q. Have you made any inquiry for the same information for the year or two preceding the New York Lubricating Company's contract?—A. I do not recall it.

Q. Have you any objection to having the original records examined by an agent of the Department, to check this up and see if they are correct, and to look up those other years?—A. Personally, I have not.

Q. Do you consent that it may be done?—A. As far as my jurisdiction extends.

Q. Have you jurisdiction over them?—A. As superintendent of machinery of the railroad company, as far as that jursdiction extends.

Q. Does that jurisdiction extend over the records showing this information and the same class of information for other years?—A. Yes, sir; I think it does.

Q. Well, do you give consent to that examination?—A. As far as I am concerned, you can.

7658 Q. I ask you if you have jurisdiction over them and if you consent to their being examined?—A. I have no further jurisdiction than that conferred upon me by the superior officers of our railroad company.

Q. Very well. Does that jurisdiction confer the custody and power over these records?—A. As custodian, I think it does.

Q. Do you consent that an agent of the Department, suggested by myself, may examine those records from the year 1900 down to the present time?—A. I do not consider that I have authority to open the railroad company's records.

Q. You refuse to consent to it, do you?—A. I do not.

Mr. ROSENTHAL. Oh, well, what is the use of quibbling on that.

Mr. KELLOGG. I want to know if we may check them up.

Mr. ROSENTHAL. You know that this man will have to put that to the president of the company.

Mr. KELLOGG. I don't know anything of the kind.

Mr. ROSENTHAL. Of course you do.

Mr. KELLOGG. He says he has power over those.

Mr. ROSENTHAL. You have had enough practical railroad experience to know that he has got to put a matter of that kind up to the

president of the company, and you know that there won't be the slightest objection to it.

Mr. KELLOGG. I don't know anything of the kind.

Mr. ROSENTHAL. Because it is within our agreement that you may check up every record that we submit.

Mr. KELLOGG. Yes; I know.

7659 Mr. ROSENTHAL. You are given exactly the same opportunity that we were given, and we permitted you to put in your whole case along these lines, on secondary evidence. What is the use of trying to create an impression here now that we refuse or conceal the examination of any record that is the basis of our exhibit here? You know that we don't. On the contrary, you know that it is within my offer.

Mr. KELLOGG. Well, now, Mr. Rosenthal, if you have got through your stump speech——

Mr. ROSENTHAL. I am not making a stump speech. I am objecting to the manifestly unfair cross-examination.

Mr. KELLOGG. I am going to get at the facts—whether we can have access to these records.

Mr. ROSENTHAL. If you can't have access to those records, we will produce the original records; that is all there is to that.

Mr. KELLOGG. Well, produce the originals, from 1900 down to the present time.

Mr. ROSENTHAL. We will produce the originals of every record we put in evidence.

Mr. KELLOGG. All right.

Mr. ROSENTHAL. And if you are objecting to these upon the ground that they are copies of the originals, I want to know it now, because we will put the originals in; we will go to Louisville and do it.

Mr. KELLOGG. I am perfectly willing to go to Louisville. I would prefer that.

7660 Mr. ROSENTHAL. Well, I want to know whether that is the basis of your objection here.

Mr. KELLOGG. Well, now, you wait until I find out whether we are going to have access; and if we are not, we will go to Louisville.

Mr. ROSENTHAL. Before we get through, I wish to know whether there is an objection to Exhibits 71, 72, 73, and 74, upon the ground that they are not originals but only copies. If there is, then we will put in the originals.

Mr. KELLOGG. Now, then, are you through?

Mr. ROSENTHAL. Yes, sir.

Mr. KELLOGG. Very well. Now, if you are through talking, I will proceed.

Q. As superintendent of machinery, have you charge of the records of your office showing the information set forth in defendants' Exhibits 73 and 74?—A. Yes.

Q. Have you charge of similar information for other years, from 1900 down to the present time?—A. I have charge of all records in the office.

Q. That would include similar information for the other years, wouldn't it? They are kept in the same form, practically, aren't they?—A. If the information is there, we have the records for it.

Mr. ROSENTHAL. If the information is where?

Mr. KELLOGG. In his office.

WITNESS. I say if the information is on that, on the exhibits, we have the records.

7661 Mr. ROSENTHAL. If the information is on those exhibits——

WITNESS. On the exhibits there.

Mr. ROSENTHAL. You have the originals in the office?

WITNESS. The original information.

Q. As to those originals showing the information on these particular exhibits, have you charge of those records, and authority to permit us to examine them?—A. I have charge of the records, but not authority to permit you to examine them.

Q. Is your authority limited by any direction?—A. My authority is limited to that of the head of the mechanical department and the title of superintendent of machinery.

Q. Who has authority to permit us to examine those records?—A. I couldn't answer it directly.

Q. You don't know?—A. I could only give you a supposition.

Q. Well, I would like to know.—A. The executive officers of the railroad company.

Q. Who are they?—A. Our by-laws state that the president is one of them.

Q. Mr. Milton H. Smith?—A. He is president.

Q. Is he the man we have got to get authority of?—A. I suppose so.

Q. And you won't give your consent to the authority?—A. I haven't authority to do so.

Q. Have you received any written limitations upon your authority on that subject?—A. No.

Q. Then, why do you say you haven't authority to give us
7662 access to those records?—A. To give that information is a matter that comes under the head of an executive officer in charge of management.

Mr. ROSENTHAL. That is the only way you gave it to us, isn't it?

WITNESS. Yes, sir.

Mr. ROSENTHAL. Because you were directed by an executive officer to do it?—A. Yes, sir.

Q. Well, what books were destroyed in that fire?—A. I do not know.

Q. Do you know that any of the books showing this information since 1900 were destroyed?—A. I do not know it.

Q. Was the fire where these particular records were kept?—A. I do not know that.

Mr. KELLOGG. Well, they are objected to, unless the railroad company will consent that we may examine their records from 1900 down to the present time.

Mr. ROSENTHAL. In other words, you put us in an entirely different position than we put you.

Mr. KELLOGG. Not at all.

Mr. ROSENTHAL. We agreed that everything might go in, subject to our right to check it up, and we didn't call upon any railroad company to agree to that or to become a party to that agreement.

Mr. KELLOGG. You didn't have to, because the railroad companies' books are always open to the Standard Oil Company, and they are always closed to us.

7663 Mr. ROSENTHAL. And that is your only reply to the different situation that you put us in than we put you in, is it?

Mr KELLOGG. You have never asked me to make an agreement covering this matter at all; and I have never made one, have I?

Mr. ROSENTHAL. Yes, surely you have.

Mr. KELLOGG. I certainly have not.

Mr. ROSENTHAL. You certainly have.

Mr. KELLOGG. I have not.

Mr. ROSENTHAL. I say that your agreement was that wherever we used records of a railroad company we would have the right to put in secondary evidence of that, in exactly the same way that you did, subject to your right to check it up with the originals.

Mr. KELLOGG. Are you through?

Mr. ROSENTHAL. Now, do you say that the agreement was entirely one-sided as to you, and does not apply as to our side of the case? Wasn't that the exact agreement that we made with you at Washington, in connection with the Durand and Schindler testimony?

Mr. KELLOGG. No, sir.

Mr. ROSENTHAL. It wasn't?

Mr. KELLOGG. It was not, and you know it was not.

Mr. ROSENTHAL. It was the exact agreement.

Mr. KELLOGG. The agreement was that Mr. Durand, Mr. Schindler, or any other agent of the Department was to have the right to examine certain railroad books, vouchers, etc., more specifically noted, and to state the substance thereof; and you limited it to men in that Department, too.

7664 Mr. ROSENTHAL. Yes. And then what?

Mr. KELLOGG. That is all. That was the agreement.

Mr. ROSENTHAL. That we would agree that secondary evidence might go in, subject to our right to check it up.

Mr. KELLOGG. Their testimony; the testimony of these particular men that you named.

Mr. ROSENTHAL. And the further agreement was that we would be given the same right.

Mr. KELLOGG. No, sir. There never was such a thing asked, suggested, agreed upon, or talked of.

Mr. ROSENTHAL. All right. All right, sir. We will have to proceed, then, to make original proof, I suppose, of all this.

Mr. KELLOGG. If the Louisville & Nashville Railroad will be perfectly fair in this matter and will give us a chance to examine their books——

Mr. ROSENTHAL. You know that they will be perfectly fair. And you know that you are trying to create a situation here to show that they are not perfectly fair——

Mr. KELLOGG. Not at all.

Mr. ROSENTHAL. Through a man who hasn't any authority at all.

Mr. KELLOGG. Not at all. I don't know either one way or the other yet. I am not charging Mr. Curtis with being unfair in the slightest degree yet.

Mr. ROSENTHAL. Do I understand that defendants' Exhibits 71, 72, 73, and 74 are objected to upon the ground that they are copies of the originals?

Mr. KELLOGG. Yes, sir.

7665 Mr. ROSENTHAL. Very well.

Mr. MORRISON. Mr. Rosenthal, I understand you that we have a right to check up all this from the original books, and that in case that right is refused us by the railroad company we may interpose this objection.

Mr. ROSENTHAL. Why, certainly. Certainly. There is not the slightest doubt about that. The clearest kind of a statement to that effect has been made—that wherever you can not have access to the originals, we will get the originals and put in the originals.

Mr. KELLOGG. I know, but that includes the right to examine the years before and the years after, so far as they have them; and it is nothing more than a perfectly fair request—perfectly fair request.

Mr. ROSENTHAL. So far as I am concerned I have not the slightest doubt but what the L. & N. road will give you access to all of their books and papers in this regard. I am not going to make an agreement with you that when I put in a copy of an original document I will obligate myself that unless the road will give you access to all of its records going beyond the originals from which I make up my copy that therefore my copies will be excluded. That is not a fair agreement, because all I am putting in here are copies of certain limited portions. I have not the slightest doubt but what the L. & N. road will give you access to those other years. We have selected these two particular years as the basis of our comparison. We have

7666 taken the second year of the New York Lubricating contract and the second year of the Galena contract for the purpose of instituting a comparison. If there are any other years that you want from the L. & N. road, I have no doubt at all but what you can get them; but I am not going to obligate myself to give them to you. In other words, I am comparing 1904 and 1905 with 1906 and 1907. Now, you want me to agree, before you will accept these copies of the 1904 and 1905 and 1906 and 1907 records, you want me to obligate myself that I will also get the consent of the railroad com-

pany that you may examine records preceding those years. I don't know whether they have them.

Mr. KELLOGG. Well, all I know about that is this (and all we want is to be fair) that Mr. Smith has absolutely refused to permit the Department to give us any information, positively. He has compelled the Department to subpoena witnesses and get what information it could. There has not been any disposition to give us the information in relation to this at all, and we don't believe there will be. I don't want to say that Mr. Smith won't change his mind, but, so far, he has not shown any disposition to do it.

Mr. ROSENTHAL. What have you asked him for that you haven't got?

Mr. KELLOGG. We never got anything without compelling them to give it.

Mr. ROSENTHAL. What have you asked him for that you haven't got?

Mr. KELLOGG. The entire records showing the result of lubri-
7667 cation before and since the contract with the New York Lubricating Company.

Mr. ROSENTHAL. Have you asked him for that?

Mr. KELLOGG. Oh, certainly.

Mr. ROSENTHAL. When?

Mr. KELLOGG. We have got his letter refusing it.

Mr. ROSENTHAL. When was he asked for that?

Mr. KELLOGG. Oh, some time ago. I can't tell when it was, without looking up the letters, positively.

Direct examination (resumed) by Mr. ROSENTHAL:

Q. Do you know when they began keeping a record of the hot-box delays on the L. & N. road?—A. I think it was August 1, 1903, as I instituted that record as soon as I took the position of superintendent of machinery.

Q. Do you know whether they have any record preceding that, on hot boxes and hot-box delays?—A. I don't know as they have, and I think they have none.

Q. Do you know when they began keeping a record of the cost of waste for lubrication?—A. I do not.

Q. I call your attention, Mr. Curtis, to Exhibit 74. That exhibit shows that from July, 1904, to May, 1903, both months inclusive, there were 440 delays to locomotives, by reason of hot boxes or hot bearings, does it not?

Mr. KELLOGG. That is objected to as incompetent. The witness has no knowledge, of his own information.—A. Yes.

7668 Mr. KELLOGG. Are you testifying from your own knowledge or what you see on that statement?

Mr. ROSENTHAL. My question shows what he is testifying from. I am calling his attention to the statement.

Q. Now, as I understand it, the New York Lubricating contract ended in March, 1905, either March 1 or March 2, so Mr. Harrison, their representative here, says.—A. I think so.

Q. I observe that on this statement, defendants' Exhibit 74, the number of delays for March, 1905, was 31; for April, 32, and for May 30. During those three months the Galena experts were in charge under the Galena contract, were they not?—A. I think so.

Q. Although the New York oils were still in use for several months after the New York Lubricating Company contract terminated?—A. I think they were.

Q. Now, with the exception of December, 1904, when the number of delays was 27, the number of delays during March, April, and May were less than any other months for that entire period; is that not so?—A. It is so, according to this report.

Q. And when you examine Exhibit 74 for those three months, under the head of delays to passenger cars, you find that in March the delays were 19, in April 31, and in May 23, which were the three lowest months for the entire period, so far as passenger cars were concerned; is that not so?—A. Yes, sir.

Q. Now, the total number of hot boxes, or the total number of delays caused by hot bearings, from July, 1904, to May, 1905,
7669 was 440. What was the total number of delays from July, 1906, to May, 1907, due to hot bearings on locomotives, both months inclusive?—A. 148.

Q. So that there had been a reduction in those two years that the Galena had taken charge of the lubrication of the road, in the number of hot bearings on locomotives, comparing the same months, of from 440 to 148?—A. Yes, sir.

Q. From July, 1904, to May, 1905, both months inclusive, during the period of time that the New York Lubricating Company was lubricating the L. & N. road, with the exception of the last three months thereof, what was the total number of delays, as shown by your records, due to hot bearings or hot boxes on passenger cars?—A. 438.

Q. Covering the same months, from July, 1906, to May, 1907, inclusive, what was the total number of delays on passenger cars?—A. 167.

Q. So that there had been a reduction, under Galena lubrication, in the number of delays on passenger cars, due to hot bearings, from 438 to 167?—A. Yes.

Q. And this statement, defendants' Exhibit 74, also shows the exact number of hours incident to each delay, does it not?—A. It does.

Q. From July, 1904, to May, 1905, the total number of hours of delay of locomotives, caused by hot bearings, was 139 hours and 14 minutes, was it not?—A. Yes.

Q. From July, 1906, to May, 1907, what was the total number of hours of delay due to hot bearings?—A. 56 hours and 58
7670 minutes.

Q. On locomotives?—A. On locomotives.

Q. So that there had been a reduction in the number of hours of delay of from 139 hours and 14 minutes to 56 hours and 58 minutes?—A. Yes sir.

(A conference was here had between Mr. Kellogg, Mr. Morrison, and Mr. Rosenthal.)

Mr. KELLOGG. On the understanding that we shall have a right to check the original records from which these statements are made, and, if that right is denied us, our objection remains good, I withdraw the objection to this being secondary evidence.

Mr. ROSENTHAL. Very well. That is entirely satisfactory to us.

Q. And from July, 1904, to May, 1905, inclusive, what was the total number of hours of delay to passenger cars by reason of hot bearings?—A. 114 hours and 16 minutes.

Q. And for the corresponding months of 1906 and 1907, what was the total number of hours of delay to passenger cars?—A. 46 hours and 22 minutes.

Q. Have you figured the percentage of decrease in the delays to locomotives, comparing those months of those two years?—A. Yes.

Q. And passenger cars also?—A. Yes.

Q. What was the percentage of decrease in the delays to locomotives by reason of hot bearings?—A. 66 per cent.

Q. And to passenger cars?—A. 62 per cent.

Q. Now, opposite the sentence "per cent decrease," I also find 59 per cent. What does that relate to?—A. That is the decrease in time; delay.

Q. So the percentage of decrease in delays of locomotives is 66 per cent, and of passenger cars 62 per cent, and the percentage of decrease in actual time, in both instances, is 59 per cent?—A. 59 per cent.

7671 Q. Why was an 11 months' period taken here, do you know? Why was the month of June, 1904, omitted?—A. I understand that this information is gathered from the records that we have on file.

Q. What do you mean by that? Where are the records for June, 1904, do you know?—A. We do not know. They are probably lost.

Q. The first month, then, for which you found the record was for July, 1904, as I understand it?—A. Yes.

Q. And that is the only reason that the month of June, 1904, was omitted?—A. I think so.

Q. I direct your attention specifically to defendants' Exhibit 73. This Exhibit 73 is a comparison of the months of July, 1904, to June, 1905, inclusive, and the corresponding months of 1906–7, showing the cost of waste used in lubricating locomotives and passenger cars a freight cars on the L. & N. road, is it not?—A. Yes.

Q. What was the total cost of the waste used for lubricating l motives during the 1904–5 period?—A. $8,659.33.

Q. And during the 1906–7 period?—A. $9,071.46.

Q. An increase of $412.13?—A. Yes.

Q. Or 4.7 per cent?—A. Yes.

Q. What was the total cost of waste lubrication for passenger car during the corresponding periods?—A. The years 1904–5, $2,156.48 the years 1906–7, $1,539.09.

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7672 Q. Showing a decrease of what?—A. $617.39.

Q. Or a decrease in per cent of——A. 28.6 per cent.

Q. Now give us the figures with respect to freight cars during the corresponding periods.—A. For the years 1904–5, $24,759.34; the years 1906–7, $21,646.77.

Q. What was the decrease in dollars, and what was the percentage of decrease?—A. The decrease in dollars was $3,112.57; the decrease in per cent, 12.5.

Q. Now, these figures show an increase in cost of waste lubrication of $412.13, or 4.7 per cent, on locomotives. What was the mileage for the years 1904–5 and the mileage for the years 1906–7 during these same periods?—A. Locomotive mileage for the years 1904–5 was 29,750,340; for the years 1906–7, 36,076,109.

Q. Showing a total increase in mileage of 6,325,769?—A. Yes.

Q. Or an increase of 21.2 per cent?—A. Yes.

Q. So, although the increase in the mileage was 21.2 per cent, the increase in the cost of waste used for lubrication was only 4.7 per cent?—A. Yes.

Q. On passenger cars, your increase in mileage for the corresponding periods was 5,725,630 miles, was it not?—A. Yes.

Q. An increase of 14.6 per cent?—A. Yes.

Q. And, notwithstanding the increase of 14.6 per cent in passenger car mileage, there was, nevertheless, a decrease of 28.6 per cent in the cost of passenger car waste lubrication?—A. Yes.

Q. The increase in freight mileage for the corresponding
7673 period was 37,026,549 miles, was it not?—A. Yes.

Q. Or 12.1 per cent?—A. Yes.

Q. Although the freight car mileage increased 12.1 per cent, the cost of waste lubrication decreased 12.5 per cent, did it not, for the corresponding period?—A. Yes.

Q. I notice under the head of "Passenger cars" and "Freight cars," right below the column of figures, certain deductions, $4.32 in the case of passenger cars, and $2,603.70 in the case of freight cars. What are those deductions?—A. It is the cost of waste for two new postal cars and 2,050 new freight cars built July, 1904, to March, 1905, and was included with waste for lubrication, cost estimated.

Q. So you deducted the cost of the waste used during that period in connection with the building of new cars?—A. Yes.

Q. So as to get an absolutely accurate comparison here?—A. Yes.

Q. That makes a perfectly fair comparison, then, between those two periods in getting the actual cost of waste lubrication, does it not?—A. Yes.

Q. Toward the bottom of that statement I find, "Cost per thousand miles," under the head of locomotives, 29.16 cents. Was that the total cost per 1,000 miles for waste lubrication during the 1904–5 period?—A. Yes.

Q. The total of locomotives. The total cost for waste lubrication during the 1906–7 period was 25.14 cents, was it?—A. Yes.

Q. Or a decrease of 4.62 cents?—A. Yes.

Q. On passenger cars, the total cost during the 1904–5
7674 period was 5.531 cents, was it?—A. Yes.

Q. During the 1906–7 period it was 3.442 cents, was it?—A. Yes.

Q. Or a decrease of 2.089 cents per 1,000 miles?—A. Yes.

Q. And on freight car waste lubrication during the 1904–5 period, the cost was 8.139 cents, was it?—A. Yes.

Q. During the 1906–7 period it was 6.344 cents, was it?—A. Yes.

Q. Showing a decrease in the cost of waste lubrication per 1,000 miles of freight cars during those comparative periods of 1.795 cents?—A. Yes.

Q. What was the total saving in waste used for lubricating locomotives and passenger and freight cars, comparing these two periods that we have been talking about, to wit, the 1904–5 period compared with the 1906–7 period?—A. $8,508.95.

Q. So that during the 12 months from July, 1906, to July, 1907, that the Galena was lubricating as compared with the corresponding 12 months in 1904–5, that the New York Lubricating Company was lubricating, and that their oils were being used, there is a saving in the cost of waste alone of $8,508.95. Is that correct?—A. Yes.

Q. And, of course, that takes into account the difference in the mileage in the two years?—A. It does.

Q. Mr. Curtis, what is the effect on a road like the Louisville & Nashville of a delay caused by a hot box or hot bearing?—
7675 A. Expense incident to cooling and preparing the hot box for further service; also cost incident to delays to traffic, trains, and so forth.

Q. Is the L. & N. a single-track road?—A. Yes, sir; in many places.

Q. And is a delay incident to a hot box therefore more serious to a single-track road than it would be to a double-track road?—A. Yes.

Q. Are there any problems that attach to delays due to hot boxes beyond the mere delay from that particular hot box?—A. Yes.

Q. And to that particular train?—A. Yes.

Q. Will you explain that?—A. Delay to a train by a hot box on the Louisville & Nashville Railway, being largely a single track, causes delay in traffic in both directions.

Q. Explain that in detail, just how that comes about.—A. A hot box is liable to occur any place upon the line, and as there are very few sidings, it is not always possible to clear the main line. Therefore, it is necessary to care for the hot box while a train is occupying the main track. In this respect it does not permit any of the trains following to approach; likewise it does not permit trains approaching to come nearer, as the train having the hot box has the right of way on the road. It is necessary, in a severe case of hot box, where there is long delay, to report the same to the dispatchers in order that they may make other arrangements for the dispatching of trains which are depending upon the time of the train having the hot box.

7676 Q. That covers it, does it?—A. In a general way.

Q. One hot box, then, may disturb an entire division, may it not?—A. Yes.

Q. And cause delay not only to the particular train that has the hot box, but delay all along the line to all the trains on that division?—A. It is possible.

Q. Do you think, Mr. Curtis, that it is possible to measure in money value to a railroad like the L. & N. the difference between 440 hot boxes in 11 months and 148 hot boxes?—A. From an operating standpoint it is not.

Q. Not possible to measure that in money value?—A. Yes.

Q. But a reduction within a period of 11 months in the number of hot boxes of approximately 300, so far as locomotives are concerned, would mean a tremendous difference in every direction to that road, would it not?—A. It would.

Q. And so a reduction in the number of passenger-car hot boxes from 438 to 167 would likewise mean a tremendous difference in operating expenses to the entire system, would it not?—A. Yes.

Q. A mere difference in the number of hours costs a railroad company money, doesn't it?—A. It does.

Q. In salaries to the men who are involved in the delay?—A. Yes.

Q. And the cost of specific repairs is a substantial item, is it not?—A. It is.

Q. What would you say as to the average cost in connection with the repairs due to a locomotive hot box?—A. Not less than $10.

7677 Q. So that a reduction of 300 in the number of hot boxes would mean a saving to the road for specific repairs alone of about $3,000?—A. Of not less than $3,000.

Q. What do you say as to the average cost of the repair of a passenger-car hot box?—A. Not less than $3.

Q. So that a reduction there of from 438 to 167, or a little less than 300, would mean approximately a saving of $1,000 to the railroad company?—A. Yes; not less than $1,000.

Q. And those are the expenses connected with these specific repairs, as I understand you?—A. Yes, sir.

Q. And do not take into consideration the cost to the railroad that indirectly flows from a hot box?—A. It does not.

Q. Or to the extra time that the employees must be paid for?—A. It does not.

Cross-examination by Mr. KELLOGG:

Q. Mr. Curtis, you went with the Louisville & Nashville Railroad at what time?—A. January 1, 1902.

Q. In what department?—A. In the mechanical department.

Q. What position did you occupy from the time you went there, January 1, 1902?—A. To what time?

Q. Up to August 1, 1903?—A. The position of mechanical engineer.

Q. Then from January 1, 1902, until August 1, 1903, you were mechanical engineer?—A. Yes, sir.

Q. As such what did you have charge of?—A. Particularly in building the South Louisville shops.

7678 Q. Did you have charge of the mechanical department of the Louisville & Nashville road?—A. Not in that period.

Q. Who did have?—A. Pulaski Leeds.

Q. Before that time you were with what railroad?—A. The Erie Railroad.

Q. In what position?—A. Mechanical engineer.

Q. As such what did you have charge of?—A. The drawing room and mechanical engineering department, tests, etc.

Q. Tests of what?—A. Of material.

Q. Of lubricants?—A. No.

Q. You had nothing to do with the lubricants?—A. Nothing at all.

Q. Did it come under your notice?—A. No.

Q. Prior to that time what road were you with?—A. The New York, Chicago & St. Louis.

Q. In what position?—A. Mechanical engineer.

Q. What did you have charge of?—A. The department of mechanical engineer.

Q. As such did you have charge of all the mechanical engineering departments on the road?—A. There is only one.

Q. Well, I mean of all the branches of the service?—A. There was no branch.

Q. Well, you had charge of the entire mechanical department?—A. Of the mechanical engineers' department.

Q. Very well. What did that comprise? What were the duties of that office?—A. The designing of locomotives and cars, and test work.

7679 Q. In designing the locomotives and cars, did you come in contact with the question of lubrication at all?—A. I did not.

Q. Shortly after you took charge of the mechanical department of the Louisville & Nashville road, I suppose you became familiar with the lubricating of the cars, engines, etc.?—A. As soon as I took charge as superintendent of machinery, I did.

Q. That was August 1, 1903?—A. Yes.

Q. And from that time until the close of the New York Lubricating Company's contract you had charge of it?—A. I did.

Q. Do you remember when the contract ran out?—A. What contract?

Q. With the New York Lubricating Company.—A. I remember about the time.

Q. 28th of February, 1905, was it?—A. I don't remember specifically.

Mr. ROSENTHAL. The 1st or 2d of March, I think, wasn't it, Mr. Curtis?

Mr. KELLOGG. The end of February.

Q. Before that contract ran out you looked into the efficiency of the lubrication, didn't you?—A. On the Louisville & Nashville Railroad?

Q. Yes.—A. Yes.

Q. Do you remember Mr. Smith, the president of the road, inquiring about the efficiency of the lubrication?—A. Yes.

Q. The subject of making a new contract was up, was it
7680 not?—A. I do not know.

Q. He inquired of you, didn't he?—A. He inquired of me on the subject of lubrication.

Q. Now, what did he ask you to do?—A. I do not recall exactly.

Q. You don't recall?—A. Exactly.

Q. I read you a letter, which is in evidence, from Mr. Smith, directed to Philip Harrison, esq., New York Lubricating Oil Company, in which he says: "Your favor of the 30th ultimo duly received. Although I had heard no complaints relative to the quality of the oils, etc., furnished under contract of March, 1903, I nevertheless asked Mr. Theodore H. Curtis, superintendent of machinery, to advise me as to quality of lubricants furnished by the New York Lubricating Oil Company under contract of March 1st, 1903. The following is an extract from a communication from him, dated 6th inst.: 'I have given the subject of lubrication my personal attention, and can say unhesitatingly that the oil and lubricants furnished by the New York Lubricating Company are entirely satisfactory, and I believe them to be as good as any furnished heretofore.'" Is that statement true, Mr. Curtis?—A. It was, in by best knowledge at that time.

Q. Had you given the subject your personal attention?—A. On the Louisville & Nashville Railroad?

Q. Yes.—A. On the Louisville & Nashville Railroad, not any other.

Q. Had you, as you say, inquired to see whether it was as
7681 good as any previously had?—A. I did not.

Q. You didn't look into it at all?—A. I did not.

Q. Then you didn't state the truth to the president of the Louisville & Nashville road, did you?—A. To the best of my knowledge, I did.

Q. But you say here you "can say unhesitatingly that the oil and lubricants furnished by the New York Lubricating Company are entirely satisfactory, and I believe them to be as good as furnished heretofore."—A. That was the best of my knowledge at that time.

Q. What was your belief based on?—A. On my experience with the lubricating oil at that time and what I had heard in the previous times.

Q. That is it.—A. Only by hearsay. I did not consult any record.

Q. And what you had heard as to the previous time. Now, you had men who had charge of the lubrication and who were on the road during the time the Galena-Signal Oil Company were lubricating, previous to the New York Lubricating Company's contract, hadn't you?—A. I did not know that they were lubricating.

Q. You say what you had heard. From whom had you heard it?—A. From different parties, in conversation in regard to oil.

Q. On the Louisville & Nashville road?—A. In a general way.

Q. You inquired into the subject, didn't you?—A. On the Louisville & Nashville Railroad.

Q. Have you got the entire letter that you wrote to Mr.
7682 Smith?—A. I think so.

Q. Have you got a copy of it with you?—A. No, sir.

Q. Will you furnish us a copy of that letter?—A. I haven't the authority.

Q. You decline to do it?—A. I decline on account of not having authority.

Q. Now, you say you inquired into it. You inquired of the men on the Louisville & Nashville road?—A. Not specifically.

Q. Well, generally?—A. I inquired of a few.

Q. You wanted to satisfy yourself as to whether the New York Lubricating service was as good as that previously had, didn't you?—A. I wanted to satisfy myself that it was as good as was on the road, in a general way, prior to this time.

Q. And you did so satisfy yourself?—A. To the best of my knowledge at that time.

Q. And you made those inquiries for that purpose, didn't you, Mr. Curtis?—A. Not for answering the letter; no.

Q. You didn't? You were trying to perform the very best service you could for the Louisville & Nashville Railroad, weren't you?—A. Yes.

Q. And to give your president the best information you had?—A. Yes.

Q. And you made those inquiries for the purpose of doing it, didn't you?—A. No; I made the inquiries for the purpose of knowing, in a general way, the subject of lubrication, and when this question
7683 was asked I answered to the best of my knowledge.

Q. You had records showing the performance of the Galena-Signal Oil Company prior to March 1, 1903, hadn't you?—A. I do not know.

Q. Did you ever look to see?—A. I did not.

Q. You know that the Louisville & Nashville have kept such records for years, haven't they?—A. I do not.

Q. You didn't start the form of the records when you went there on August 1, 1903, did you?—A. Not all forms.

Q. The records showing the amount of oil used per mile or 1,000 mile of run and all those details were kept prior to your going there, weren't they?—A. I suppose so.

Q. You have seen the contract of the Galena-Signal Oil Company which preceded the Lubricating Company's oil contract?—A. I can't recall that I have.

Q. Did you ever look it up to see?—A. No.

Q. Did you consult any of the records showing the cost of lubrication and the performance under the Galena-Signal's prior contract?—A. No.

Q. Well, you did say to him, "unhesitatingly that the oil and lubricants furnished by the New York Lubricating Company are entirely satisfactory," didn't you?—A. Yes.

Q. And they were so, weren't they?—A. To the best of my knowledge. Mr. Kellogg, in that reply I said to the best of my knowledge. That last I want to amend by saying to the best of my knowledge at that time.

7684 Q. But as to the satisfaction of the lubricants furnished, you didn't put it upon the best of your knowledge at all; you said you could say "unhesitatingly."—A. I said "unhesitatingly," to the best of my knowledge at that time.

Q. No. "I have given the subject of lubrication my personal attention, and can say unhesitatingly that the oil and lubricants furnished by the New York Lubricating Company are entirely satisfactory, and I believe them to be as good as any furnished heretofore."—A. Yes.

Q. That is what you said you believed, but the other you said you could say "unhesitatingly" that they were "entirely satisfactory." Now, do you want to amend that?—A. I say unhesitatingly, to the best of my knowledge at that time.

Q. You want to put that amendment in?—A. At that time.

Q. Why didn't you so state to your president?—A. I did.

Q. You didn't state it in this letter. You knew at that time, did you not, that the subject of the renewal of this contract with the New York Lubricating Company was up before the officials of the Louisville & Nashville road?—A. I did not.

Q. You did not?—A. I did not.

Q. You never heard of it?—A. Not directly.

Q. How do you mean, indirectly?—A. Yes.

Q. From whom?—A. General hearsay remarks.

Q. From whom?—A. I do not know.

Q. You heard it in the course of your employment there,
7685 didn't you?

Mr. ROSENTHAL. Fix the time. When?

Mr. KELLOGG. Along in the winter of 1905.

WITNESS. Some time along there I heard it.

Q. Whom did you hear it from?—A. I don't know.

Q. Didn't you have conferences with Mr. Huston, the purchasing agent, and Mr. Evans, the general manager, in relation to whether their contract should be renewed with the New York Lubricating Company?—A. No conference, to my knowledge, bearing directly on this subject.

Q. Did it bear indirectly on it?—A. I don't know as it did.

Q. What do you know about it?—A. Nothing.

Q. Nothing at all about it?—A. Practically.

Q. You didn't know the contract was to be renewed or not to be renewed?—A. I did not.

Q. You didn't know it was running out?—A. I knew approximately when it run out.

Q. You did?—A. Approximately.

(A recess was here taken until 2 o'clock, at which time Mr. Kellogg resumed the cross-examination.)

Q. Mr. Smith wrote you a letter which was the basis of your answer to him, on which he based his letter of February 7, didn't he? (Handing witness printed copy of record.)—A. Yes.

7686 Q. Have you that original letter in your files?—A. I think so.

Q. Will you produce it, Mr. Crutis?—A. I haven't the authority to do so.

Q. You decline to produce it, do you? (No answer.)

Q. Will you please state what the substance of that letter was?—A. I do not recall.

Q. You remember the circumstances, don't you?—A. I remember receiving a letter.

Q. What did he ask you for?—A. I don't remember.

Q. Doesn't this letter refresh your memory, so that you can give some idea of what he asked you for?—A. If he asked that question, it was answered.

Q. When he asked you to advise him as to the quality of the lubricants furnished and the service, etc., you considered that a matter of sufficient importance to look it up, didn't you?—A. I answered it at once from knowledge that I had in my mind.

Q. Of whom would the purchasing agent and the president of the road inquire as to the use of lubricants?—A. They could ask from various sources.

Q. Whom would they naturally inquire of, the head of the department?—A. The head of the mechanical department.

Q. And that was yourself?—A. Yes, sir.

Q. Now, prior to letting a contract for a term of years they would very naturally inquire of you, wouldn't they, about the use of the lubricants?—A. I think they would.

Q. Don't you think they did inquire of you?—A. They did.

Q. And subsequently the contract was let to the Galena-Signal Oil Company?—A. I don't know.

7687 Q. Don't you know that?—A. You mean subsequent to the inquiry?

Q. Subsequent to the inquiry the contract was let to the Galena-Signal Oil Company?—A. I can not say positively.

Q. What is your best recollection?—A. I think it was.

Q. Now, you informed them that the service of the New York Lubricating Company was satisfactory, didn't you?—A. To the best of my knowledge I did.

Q. So you gave them no reason for changing the contract from the New York Lubricating Company to the Galena-Signal Oil Company, did you?—A. I don't know what effect my letter had upon those men.

Q. There was nothing in it that would indicate any reason for a change, was there?—A. That would have to be decided upon by them.

Q. Do you consider that the language Mr. Smith quotes from your letter here would indicate the advisability of having it changed? Please look at it. (Handing witness copy of printed testimony.)—A. No.

Q. Did you ever make any recommendation for a change at that time?—A. No.

Q. As a matter of fact, didn't you recommend that you retain the contract of the New York Lubricating Company?—A. No.

Q. You didn't recommend one way or the other?—A. No, sir.

Q. But you told him that the New York lubricating service was satisfactory?—A. As I said in that letter.

7688 Q. That is all the communication you made to him?—A. Yes, sir.

Q. You know Mr. Philip Harrison, don't you?—A. Yes.

Q. Met him several times?—A. Yes.

Q. In connection with the lubrication of the Louisville & Nashville Railroad?—A. Yes.

Q. You met him after the contract expired, too, didn't you?—A. I couldn't say that.

Q. Do you remember of a meeting of master mechanics at Manhattan Beach in the summer of 1905 that you attended?—A. I attended that meeting; yes.

Q. Do you remember seeing Mr. Harrison there?—A. I do not recall specifically.

Q. Let me call your attention to this conversation. Did you then state to Mr. Harrison, in substance, that the Galena people had tried to get you to say that their oil was better than the New York Lubricating Company's, but that you had declined to do it?—A. I do not recall it.

Q. You do not recall it?—A. I do not recall it.

Q. You might have said it, I suppose?—A. I think not.

Q. You think you didn't? Do you remember having any conversation with Mr. Harrison at any time of that kind?—A. I do not.

Q. Did the Galena people try to get you to say their oil was better than the New York Lubricating?—A. No.

Q. You never did say it, did you?—A. I never did say it.

7689 Q. As a matter of fact, you recommended the New York Lubricating to other railroads, didn't you?—A. I do not remember specifically.

Q. Give us your best recollection.—A. I do not recall any specific recommendation.

Q. You don't recall having recommended the New York Lubricating service to other railroads?—A. Not specifically.

Q. Do you in a general way, Mr. Curtis?—A. Well, I couldn't say any railroad I recommended it to.

Q. You have no recollection?—A. No recollection of it.

Q. Who is Mr. P. P. Huston?—A. The purchasing agent of the Louisville & Nashville Railroad.

Q. Do you remember of his asking you about it?—A. I do not.

Q. Never remember of his inquiring of you about the quality and service furnished by the New York Lubricating Company?—A. I do not recall any specific time.

Q. Not the specific time, but, generally speaking, do you recollect of his bringing the subject up?—A. I do not recollect of his ever bringing the subject up.

Q. Do you remember of his stating to you that the New York Central and the Norfolk & Western inquired about the oil and service furnished your company?—A. I do not.

Q. Do you recollect his having an inquiry from the Great Northern Railroad and the B. & O. Railroad about the service furnished by the New York Lubricating Company?—A. No.

Q. You have no recollection of any correspondence between Mr. Huston and those companies?—A. I do not recall any.

7690 Q. Or any conversation or any inquiries made of you as a basis for such correspondence?—A. I do not recall any.

Q. Mr. Huston was at that time the purchasing agent, was he?—A. At what time?

Q. At the time this contract was changed from the New York Lubricating Company to the Galena-Signal Oil Company.—A. I think so.

Q. And throughout the full period of the New York Lubricating contract, wasn't he?—A. To the best of my knowledge, yes.

Q. And still is, is he?—A. Yes; I think so.

Q. Is Mr. Huston a mechanical expert?—A. I do not know.

Q. You don't know whether he is or not?—A. I do not know.

Q. In purchasing oils and in purchasing material that requires a mechanical superintendent's opinion, where does he get his information, on your road?—A. I don't know.

Q. Didn't he ever inquire of you about it at all?—A. I do not recall any specific inquiry.

Q. You mean that this contract was changed from the New York Lubricating Company to the Galena-Signal Oil Company without any recommendation from your office? By you, I mean.—A. None other than what is in that letter.

Q. And that letter was favorable to the New York Lubricating Company?—A. I don't know what its interpretation was.

Q. Well, it would be pretty hard to place any interpretation on that language of yours which would be unsatisfactory to the

7691 New York Lubricating Company, wouldn't it?—A. It depends upon the judge.

Q. "I have given the subject of lubrication my personal attention, and can say unhesitatingly that the oil and lubricants furnished by the New York Lubricating Company are entirely satisfactory." You

think that would be good ground for changing from the New York Lubricating Company to the Galena-Signal Oil Company?—A. Not from me it wouldn't.

Q. And that is all they had, isn't it, from you?—A. I don't know.

Q. Do you know of any other recommendation you made to them?—A. No.

Q. Why was the contract changed from the New York Lubricating Company to the Galena-Signal Oil Company?—A. I don't know.

Q. You were not consulted?—A. No, sir.

Q. Further than this?—A. Further than that, if that had a bearing upon it.

Q. Did you know at the time the terms of the New York Lubricating Company's contract, the guaranty?—A. Not specifically.

Q. Do you know that the guaranty made by the New York Lubricating Company was $1.53 per 1,000 miles engine run?—A. No.

Q. Didn't you inquire into it at all?—A. No.

Q. Never looked into it?—A. No, sir.

Q. Do you know that the passenger service was 12 cents?—A. No, sir.

Q. And that the freight car was 7.2 cents?—A. No.

7692 Q. Do you know that when they came to let the contract, on March 1, 1905, to the Galena-Signal Oil Company, they paid them higher rates than that?—A. No.

Q. You don't know anything about it?—A. I don't know anything about it.

Q. You never looked into it?—A. No, sir.

Q. Do you know who made that contract?—A. I do not.

Q. Do you know that they actually gave a contract to the Galena with a guaranty of, practically, $1.69½ per 1,000 miles?—A. As I recall the figures, $1.69; I don't know the fraction.

Q. Which was about 16 cents above the New York Lubricating Company contract?—A. I don't know what it was above.

Q. 16 cents for passenger cars.—A. I didn't know that.

Q. And 9 cents for freight cars.—A. I didn't know that.

Q. You didn't know that?—A. I did not.

Q. Then, you had no information at that time yourself why the contract was changed?—A. No.

Q. And you know of no reason why it was changed at that time?—A. No.

Q. Did you ever write to or communicate with Mr. Huston about the New York Lubricating oils?—A. I can not recall specifically any communication.

Q. Have you a general recollection of having told or written him that their oils were entirely satisfactory?—A. I do not recall any.

Q. I will show you a copy of a letter from P. P. Huston to the New York Lubricating Oil Company, dated October 15th,

7693 and a copy of a letter from Theodore H. Curtis to P. P. Huston, dated October 14, and ask you if you recall those letters.

Mr. ROSENTHAL. What year?

Mr. KELLOGG. I will show them to you in just a moment.

A. I recall writing that letter.

Q. Now will you look at the letter from Mr. Huston to the New York Lubricating Company, and I ask you if you heard of that letter at the same time and knew about it?—A. No.

Mr. KELLOGG. You have no objection to this being copied?

Mr. ROSENTHAL. Not if he says he remembers it.

Mr. KELLOGG. He said he recalls that letter.

Q. I understood you said you recalled that letter? That was the one that was written by you to Mr. Huston.—A. I recall that letter, yes, sir.

Mr. KELLOGG. I offer to read this letter in evidence:

"Theodore H. Curtis, Supt. Machinery,

"LOUISVILLE & NASHVILLE RAILROAD COMPANY,
"OFFICE OF SUPERINTENDENT OF MACHINERY,
"*Louisville, Ky., Oct. 14th, 1903.*

"Mr. P. P. HUSTON,
"*Purchasing Agent.*

"DEAR SIR: Re. cylinder oil.

"In reply to yours of August 3rd, we have made a careful investigation of the trouble reported with the valve oil furnished by the New York Lubricating Oil Co.

7694 "This oil is giving entire satisfaction, and as near as we can ascertain the pump foreman did not like the oil because it was darker color than the other, and he supposed it was the car oil, they knowing that if it had been car oil it would not have given good service; therefore they reported that the oil did not give good service. The oil is all right, and we will continue to use it and not use the Tropic cylinder oil.

"Yours, truly,

"THEO. H. CURTIS."

Q. Do you recollect any other communications, verbal or written, with Mr. Huston, about the use of the New York Lubricating oil and the satisfaction it gave to your company?—A. Not specifically.

Q. Do you recollect Mr. Huston writing to Mr. Fairchild, the purchasing agent of the New York Central Railroad? [Handing witness paper.]—A. I do not.

Q. What?—A. No.

Q. That subject never came up between you and Mr. Huston?—A. Not that I recall.

Q. You have no recollection of any conversation occurring between yourself and Mr. Huston about inquiries from any of these roads?—A. No.

Q. But you always informed Mr. Huston that the New York Lubricating service was satisfactory, did you?—A. I can't say that I did.

Q. Did you ever inform him that it was not satisfactory?—
7695 A. I don't recall any such information.

Q. Do you know Mr. Grundy?—A. I know a Mr. Grundy.

Q. What is his first name?—A. I don't know.

Q. Barton H. Grundy?—A. I don't know.

Q. Standard Oil sales agent?—A. I don't know that.

Q. Where does he live?—A. I don't know.

Q. Where did you know him?—A. I have seen him in Louisville.

Q. Who is the Mr. Grundy that you know? What is his business?—A. I think connected with the oil business.

Q. How long have you known him?—A. From three to five years, to the best of my knowledge.

Q. From August 1, 1903, until the first of March, 1905, you had charge of the lubrication of the Louisville & Nashville Railroad?—A. Yes.

Q. And during that time the New York Lubricating Company, represented by Mr. Harrison, was furnishing the service and the lubricants?—A. The New York Lubricating Company was furnishing the lubricants, I suppose represented by Mr. Harrison.

Q. They were furnishing the lubricants and furnishing the experts, were they not?—A. I thought so.

Q. And during that time you made no complaint of their service, did you?—A. To whom?

Q. Mr. Harrison or to anybody else?—A. Minor complaints.

Q. Well, I know, but no complaint beyond what you make of any service?—A. Yes, I did.

Q. What were they? What complaints did you make to Mr.
7696 Harrison or to any of his men? State the men and what the complaints were.—A. There was complaint made about the oil coming with water in the barrels; there were several cases of it, I don't know how many.

Q. There was one complaint of that kind, wasn't there, and the barrel was held out?—A. There was more than one.

Q. That barrel was taken out, wasn't it, and other oil furnished?—A. I think it was satisfactorily adjusted.

Q. Well, those are things that are liable to happen at any time, aren't they?—A. They don't happen now.

Q. Do you remember more than one of those?—A. Yes.

Q. How many do you remember?—A. I think I can specifically call three, and I think there were as high as six or seven cases.

Q. Six or seven cases. Whose attention did you call to it—Mr. Harrison's?—A. I think I spoke to Mr. Harrison about it.

Q. They were remedied, were they—other oil furnished?—A. I think so.

Q. How would water get into a barrel—leakage, or something?—A. That I don't know.

Q. You have no reason to believe they were trying to sell you water for oil?—A. No, sir.

Q. They acted like men in good faith, didn't they?—A. Yes, sir.

Q. Tried to give you good service, so far as you know?—A. So far as I know.

7697 Q. Now, did you make a test in the machinery office between the Galena oils and the New York Lubricating oils, of the signal oils?—A. I do not recall.

Q. I will read to you a clause from a letter: "Comparative tests of the New York and Galena oils were made in supt. machinery's office yesterday and the result is directly the reverse of Mr. Adair's report. The Galena is somewhat the heavier of the two, but the New York oil burns longer that the Galena with a clear even flame and does not char the wick a particle, whereas the wick was charred by the Galena oil." That is a letter dated July 13, 1904, written by P. P. Huston, purchasing agent, to Mr. C. B. Phelps, superintendent of transportation. Do you remember such a test?—A. I do not recall it.

Mr. ROSENTHAL. Wait a moment. I object to that method of cross-examination. The cross-examiner hasn't any right to read into this record a paragraph or a pretended paragraph from a pretended letter that this witness hadn't anything to do with the writing of or the making of.

Q. Did you make any tests between the Galena-Signal Oil and the New York Lubricating?—A. I do not recall any specific test.

7698 Q. Do you recall any test, whether specific or not; generally recall any knowledge of tests of that kind?—A. There may have been tests made.

Q. Now, Mr. Curtis, you have made up a statement here, or caused to be made up, Exhibit 74, showing the delays in locomotives and passenger cars caused by hot boxes. Is that correct [handing exhibit to witness]?—A. To the best of my knowledge.

Q. Now, what causes a hot box?—A. The two surfaces of the metals coming together.

Q. Is it more apt to occur in breaking in new cars and new engines than after they have been running a time and got smooth?—A. Yes.

Q. More hot boxes occur with new equipment than with older equipment?—A. Under what conditions?

Q. I mean new equipment just put on the road, new engines and new cars, after a short time, when they are being broken in, worn down, smoothed up, or whatever you call it.—A. Assuming that they are properly lubricated?

Q. Yes; whether new equipment is more liable to hot boxes than after it has been running a while.—A. After they are broken in it is not.

Q. I am talking about when you are breaking them in, running them on the road?—A. They are broken in when they are in use.

7699 Q. Well, will you answer whether new equipment when it is being broken in on the road is more liable to hot boxes than older equipment after it has been running a while?—A. New equipment is more liable to a hot box when it is being broken in than old

equipment in service. By the word "service" I mean in use; not standing on a side track.

Q. Now, I notice that during the 11 months of the test shown on defendants' Exhibit 73 you put in service 2,050 new cars, didn't you [handing exhibit to witness]?—A. Yes.

Q. That is, on Exhibit 73, in which you compare the amount of waste used?—A. Yes, sir.

Q. I notice on Exhibit 74 you make no comparison of hot boxes on freight cars between the two periods, do you [handing exhibit to witness]?—A. No.

Q. You have made no comparison between the hot boxes on freight cars during the period of the New York Lubricating contract and during the period of the Galena-Signal Oil contract?—A. No.

Q. And you have made no comparison of the delay of freight trains between those two periods?—A. No.

Q. Have you any information on that subject?—A. No.

Q. Did you ever look it up?—A. No.

Q. Why did you confine yourselves to passenger cars?—A. Because I had the information at hand.

Q. Well, you had to look it up, didn't you, and tabulate it in this statement?—A. Yes.

7700 Q. Why didn't you tabulate the freight cars?—A. I didn't have the information to tabulate it from.

Q. Haven't you got books showing the delays to freight trains?—A. Not in the mechanical department.

Q. Didn't you keep hot-box statements on freight trains?—A. No, sir.

Q. Not at all?—A. Not in our department; not in the mechanical department.

Q. What department does keep it?—A. I don't know as any department keeps a record of it.

Q. What department would keep it, if such a statement was kept?—A. The operating.

Q. The operating department. You don't know whether they keep it or not?—A. I do not.

Q. Doesn't a hot box on a freight train, on the main line, delay the traffic just as much as a hot box on a passenger train?—A. Not as much.

Q. Why?—A. Passenger trains are of a higher speed and they command a greater radius of action, of clearance, and they affect more trains; they are a higher class train.

Q. But a freight train standing on the main tracks blocks the passenger trains and blocks the freight trains just exactly as much as a passenger train standing on a main track, doesn't it?—A. Yes, sir.

Q. So that if a freight train is stopped by a hot box it delays traffic just the same as though it was a passenger train?—A. Yes.

7701 Q. Now, it costs just as much to fix a hot box on a freight car as it does on a passenger car, doesn't it?—A. For cars having the same size journal it would cost nearly as much.

Q. So it is just as important to keep your freight trains moving as it is your passenger trains moving, isn't it?—A. No.

Q. It isn't as important?—A. It is not.

Q. It costs just as much to repair a hot box on a freight locomotive as it does on a passenger locomotive, doesn't it?—A. Yes; of equal size.

Q. Now, why isn't it just as important to keep the track clear of stalled freight trains as it is of stalled passenger trains?—A. It is.

Q. During the time of this statement (1904 and 1905) the 11 months in which the New York Lubricating Company was furnishing the lubricants, you had a large number of new engines, didn't you?—A. I think so.

Q. During that period you bought and put in service on that road a large number of new engines, didn't you?—A. We put on a certain number.

Q. How many?—A. I don't know.

Q. A good many, didn't you?—A. Tell me what the word "many" means.

Q. Well, a good many for the size of the Louisville & Nashville road.

Mr. ROSENTHAL. Compare the number you put on in 1904 with the number you put on in 1906.

7702 WITNESS. I can't recall the number specifically for those years.

Mr. ROSENTHAL. That is a matter of comparison.

WITNESS. Yes.

Q. Didn't you put more new engines in service on the Louisville & Nashville during this period of 1904–5 than you ever put on any year before or since?—A. I don't know.

Q. What is your opinion on the subject? You must certainly have a recollection of that.—A. I know we put on more locomotives than we had been putting on some years prior to that time.

Q. And you put on more than you have put on any year since, didn't you?—A. I don't know.

Q. What is your opinion on it?—A. I don't know.

Q. You have a recollection of the subject, haven't you?—A. Not specifically in the year.

Q. Well, during those two years, 1904 and 1905?—A. I would have to refer to the record to tell you.

Q. Well, will you furnish a statement showing the number of new locomotives, the number of new passenger cars, and the number of new freight cars put in service during each year of 1904, 1905, 1906, and 1907?—A. I have no authority to furnish the information.

Mr. ROSENTHAL. We will ask them to do it.

Q. Will you do it for each year from 1900 down to the present time?—A. I have no authority to do it.

Q. Then you decline to do it?—A. On the ground of having no authority.

7703 Mr. ROSENTHAL. We will join in that request with you, Mr. Kellogg, and get it.

Q. Now, taking up this statement, defendants' Exhibit 73, when did you commence to use grease on the rod pins and driving boxes of your locomotives?—A. I do not recall the time.

Q. Don't you remember that during the time the New York Lubricating Company was lubricating your road, they commenced that and instituted the experiments, using grease on the locomotives instead of oil?—A. I remember that it was during the time the lubrication was being done by the New York Lubricating Oil Company that we commenced using grease; not as an experiment.

Q. But you commenced to use it?—A. Yes.

Q. It was not used universally on your road when their contract closed, was it?—A. No.

Q. It was only being used in certain instances, to a small extent?—A. To some extent.

Q. It was not a large extent, was it, as compared with your total lubrication?—A. No, it was not.

Q. They commenced it in a small way in the first instance, didn't they?—A. Yes.

Q. And tested it from time to time?—A. They may have considered it a test; we didn't.

Q. It was not installed on the whole system while they were there, was it?—A. No.

Q. And it was only being used to a small extent when their contract expired; isn't that true?—A. Yes.

Q. Were they using it at all when their contract began?—A. I think not.

7704 Q. That is, you think your company was not using it when the New York Lubricating contract commenced?—A. I do not think the L. & N. was using the grease.

Q. Now, to what extent since that time have you used it?—A. Since what time?

Q. Since the expiration of the New York Lubricating contract, March 1, 1905.—A. To a limited extent.

Q. How extensively?—A. Progressively from the time that the New York Oil Company's contract went out.

Q. Increasing all the time?—A. Slowly.

Q. What proportion of your engines now are you using grease on?—A. I don't know.

Q. What is your best opinion?—A. Less than an eighth.

Q. Less than an eighth?—A. For driving boxes; I don't know what per cent.

Q. Aren't you using it on the great majority of engines which have your rear driving box in close proximity to the fire box?—A. No.

Q. You are not?—A. No.

Q. Have you a statement showing what engines you are using it on?—A. Not here.

Q. Can you make up such a statement?—A. If authorized.

Q. Will you do it?—A. If authorized to do so.

Q. You say you are not using it on one-eighth of your engines?—A. I don't know what that number is.

Q. But you have been using it in an increasing ratio all the time?—A. Progressively.

7705 Q. Now, where you use grease, you don't use waste, do you?—A. No.

Q. So it lessens the amount of waste you use?—A. That applies only to the driving box. But grease is used on the rods on the side.

Q. But it lessens the amount of waste used, doesn't it?—A. To a very small extent.

Q. Well, to some extent, doesn't it?—A. Very little.

Q. You don't use any waste in boxes where you use grease, do you?—A. Not in the cellar of the box.

Q. You don't use any waste in the box, do you?—A. Use it on the box.

Q. Oh, well, there is very little waste used on the box, isn't there?—A. Very little.

Q. You buy your waste of the Franklin Manufacturing Company, don't you?—A. I don't know.

Q. Did you ever know whether you bought it of that company or not?—A. No.

Q. You never had any information?—A. No, sir.

Q. Do you know now whether you ever bought any waste of the Franklin Manufacturing Company, Franklin, Pennsylvania?—A. No.

Further cross-examination of this witness was postponed until Monday, June 29, 1908.

7706 EDWIN S. HEDGECOCK, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Where do you live, Mr. Hedgecock?—A. Louisville, Kentucky.

Q. What is your business?—A. Chief clerk to the superintendent of machinery, Louisville & Nashville Railroad.

Q. That is, you are the chief clerk for Mr. Curtis?—A. Yes, sir.

Q. The witness who has just left the stand?—A. Yes.

Q. I show you defendants' Exhibit 71. Do you recall the receipt of that letter at Mr. Curtis' office?—A. I do.

Q. Was it turned over to you to attend to?—A. It was.

Q. State briefly what you did in pursuance of that letter.—A. I prepared a statement showing the number of hot boxes on locomotives and passenger cars for the period from July 1, 1904, to May 31, 1905, and from July 1, 1906, to May 31, 1907; also a statement showing the cost of waste used for lubricating locomotives, passenger cars and freight cars, from July 1, 1905, to June 30, 1906, and from July 1, 1906, to June 30, 1907.

Q. I show you defendants' Exhibits 73 and 74. Please examine them and state whether they are correct copies of the statements that you prepared.—A. They are.

Q. Who, if anyone, assisted you to prepare these statements to which you have just referred, of waste and hot boxes?—A. William J. Hillger, clerk in the same office, in our office.

7707 Q. Is he here to-day?—He is.

Q. Where did you get the data which are incorporated in these statements?—A. From the records in our office.

Q. And do you know that they are correctly transcribed and tabulated from those records?—A. They are, to the best of my knowledge.

Q. Did you go over them with Mr. Hillger and check them?—A. We checked them, yes.

Q. From what period did you find there were records of hot boxes similar to those from which these were taken?—A. The record of hot boxes on passenger locomotives and passenger train cars dates from September 1, 1903.

Q. Do you mean by that, that prior to that date there are no records of those?—A. There are no records in our office.

Q. Do you know of there being any records anywhere in the Louisville & Nashville offices?—A. No, sir.

Q. Do you mean you don't know, or that there are none?—A. I don't know.

Q. Did you inquire to see?—A. I made no particular inquiry, but it is my judgment that there are not. There are none in our office.

Q. What is the fact as to records of hot boxes on freight cars? Did you find any records of those?—A. We have no record in our office.

Q. For any time?—A. No, sir.

Q. Does that also apply to what are called mixed trains, that is, partly freight and partly passenger?—A. Yes, sir.

7708 Q. Hot boxes on mixed trains, if there were any, are not represented upon this table?—A. No, sir.

Q. Do you know of there being anywhere in the Louisville & Nashville offices records of hot boxes on freight or mixed trains?—A. I don't know of any such record. I do not.

Q. They would naturally be in your office, wouldn't they, if they were kept anywhere?—A. I should think so.

Q. This table of hot boxes is made up for 11 months from July 19, 1904, to May 19, 1905, in one instance, and for the corresponding months of 1906 and 1907, in the other instance. Why was that period selected and not a full year? I show you a letter from Mr. Evans to Mr. Curtis, defendants' Exhibit 71, and call your attention to the fact that it asks for information for the period from June 1, 1904, to June 1, 1905. Why was the month of June, 1904, omitted, if you know?—A. For the reason that we were short the record for June.

Q. What do you mean by saying that you were short that record?—A. We didn't have the record.

Q. You did not find the record?—A. No.

Q. You searched for it, did you?—A. Yes, sir.

Mr. MORRISON. Your questions are pretty leading, Mr. Crawford. I don't want to object unless it becomes necessary.

Mr. CRAWFORD. I think you are right, Mr. Morrison.

Q. Did you make any search to find whether there was a record for the month of June, 1904, of hot boxes and waste?—A. We did.

Q. And did you find any?—A. We did not.

7709 Q. Therefore you made it up for 11 months; is that right?—A. That is correct.

Q. Look at defendants' Exhibit 73. At the foot of the fifth column of figures under "Freight cars" for the year 1904–5, I call your attention to an item of $2,603.70, which is deducted from the previous total. Were you present and did you hear Mr. Curtis testify in regard to that item?—A. I did.

Q. Do you recall making up the account of new cars which that represents?—A. I did.

Q. And is that item correct, according to that——A. It is. That item, however, is an estimate, as stated in the last paragraph.

Q. That, at any rate, is the estimate which you made?—A. Yes, sir.

Q. Do you know after the contract with the Galena-Signal Oil Company went into effect, in March, 1905, what oils were used upon the Louisville & Nashville road for the ensuing few months?—A. After which?

Q. After the beginning of March, 1905.—A. New York oils.

Q. Why was that?—A. For the reason that we had quite a large stock of New York oils on hand at that time, and it was the understanding that they would be taken over and used.

Q. And how long did they continue to be used, if you know?—A. In my judgment, about four months.

Q. That would be through March, April, May, and June, 1905; is that what you mean?—A. Yes, sir.

Q. Then the Galena oils did not come into use until about

7710 July; is that your meaning?—A. About July they began using them pretty generally, but there were some divisions where they were not used for probably six months.

Q. Do you know whether during the periods that are mentioned on defendants' Exhibit 73 (that is the hot-box record) there were any hot boxes on freight trains?—A. Do I know whether there were any or not?

Q. Yes. Did you hear of any?—A. I have no record, but from my general knowledge I should say there were.

Mr. MORRISON. I don't suppose he knows any more about that than any of the rest of us.

WITNESS. What period did you ask?

Q. I mean the periods covered by defendants' Exhibit 73, namely, July, 1904, to June, 1905, and July, 1906, to June, 1907.—A. There were more or less hot boxes during those periods, on freight trains.

Q. Have you any distinct recollection in regard to that matter?

Mr. MORRISON. That is objected to. It does not appear that this witness has any knowledge whatever upon this subject, and it does appear that he is simply stating that which it is supposed everybody understands, that there are hot boxes on all trains. I understand that this man's work is only clerical.

Mr. CRAWFORD. He is the chief clerk to the superintendent of machinery and has seen a great many records.

Q. Do you know whether there were any new freight cars added during the period 1906–7 and put into use?—A. There were.

7711 Q. Do you know how the number that were so added compared with this number of 2,050 which are mentioned as having been put in from July, 1904, to March, 1905?—A. I have not the exact record, but I should say about twice the number; about 4,000 cars.

Q. Do you mean to say there were about 4,000 new freight cars added during the period from July, 1906, to June, 1907?—A. I should say about that.

Q. Or, roughly, twice as many as the number added in the period from July, 1904, to June, 1905?—A. Yes, sir.

Q. That is your best recollection?—A. That is my best recollection without having the records.

Cross-examination by Mr. MORRISON:

Q. Your duties are purely clerical, are they not?—A. Not entirely so; no, sir.

Q. What duties do you perform that are not clerical?—A. I have supervision over the office work and clerical force in our office; also supervision over the clerical force of the mechanical department on the line.

Q. You mean, then, that you not only do clerical work yourself, but you supervise others that do the same kind of work?—A. Yes, sir.

Q. But your efforts are entirely confined to that department; you have nothing to do with the operating department, have you, except so far as your records go?—A. Any further than I conduct

7712 the correspondence and such matters as that, pertaining to our department.

Q. Yes; but your work is all done in the office, and not out on the road.—A. I am out on the road considerable.

Q. What for?—A. It is necessary to be out, in order to keep informed on these matters that I attend to.

Q. Do you mean that you travel over the road and gather up information?—A. Yes, sir.

Q. What kind of information do you get? What do you do with it when you get it?—A. I keep informed as to the material on hand, and such matters as that, such as the general information that I want to obtain.

Q. Do you have to go out over the road to learn that? Don't your records show that?—A. Not always; no, sir.

Q. And your records from different departments and different employees?—A. It doesn't always give the information we want. Sometimes we want to have an interview with them in regard to these matters.

Q. How much of the time do you spend out on the road?—A. I couldn't say definitely; probably sometimes I am out three or four days a week; sometimes a week at a time; probably won't be out again for a month; probably two days a week; probably one day a week; it just depends on circumstances.

Q. As I understand you, you assisted in the making up of defendants' Exhibits 73 and 74?—A. Yes, sir.

Q. Did you have anything to do with making the original
7713 train reports on which defendants' Exhibit 74 is based?—A. I did not.

Q. Then I assume that you don't know whether the reports for the two years were made upon the same basis or same theory or not, of your own knowledge?—A. They were made from the same reports.

Q. Yes; but you don't know whether the reports are made upon the same basis or upon the same theory or not, do you?—A. They are made in exactly the same manner.

Q. On the same form, you mean?—A. On the same form; yes, sir.

Q. But you have nothing to do with their making, and you see them first when they come into your office?—A. Yes, sir.

Mr. CRAWFORD. Are you speaking about the hot boxes now?

WITNESS. Yes.

Mr. MORRISON. Yes; defendants' Exhibit 74.

Q. Who besides you worked on defendants' Exhibits 73 and 74?—A. Mr. William J. Hilger worked on Exhibit 74.

Q. Who is he?—A. A clerk in our office.

Q. Under you?—A. Yes, sir.

Q. Who else?—A. There might have been one or two helped in a minor way, but he had charge of the hot-box report.

Q. Who else worked on either of these exhibits?—A. A clerk by the name of Dickey assisted Mr. Hilger on making up the hot-box report, to some extent.

Q. He was a clerk in your office, was he?—A. Yes, sir.

Q. Anybody else?—A. Not on the hot-box report.

7714 Q. Who else worked on defendants' Exhibit 73 (that is, in reference to the cost of waste)?—A. Exhibit 73 was taken off by myself, and a lady stenographer assisted to a certain extent, that is, merely calling back the figures afterwards.

Q. You dictated it, did you?—A. Yes, sir.

Q. From what books or records is defendants' Exhibit 73 taken?—A. From our record of performance of locomotives and cars.

Q. Is that kept in a book, or is it kept on sheets, or how?—A. It is kept on sheets. Afterwards it is filed in a book record.

Q. What do you mean? That the sheets are bound into a book?—A. Yes, sir.

Q. How far back does that record extend?—A. That record extends back possibly to 1895.

Q. Was no record kept back of 1895?—A. Possibly so. I don't know the exact date.

Q. Did you examine to see whether there were any earlier records kept?—A. No, sir.

Q. You just went to these two years? You just examined for these years?—A. Yes, sir. I took off the two years that I was instructed to take off.

Q. Are there several volumes of that kind of reports on file in your office?—A. Yes, sir.

Q. How does it happen that the month of June disappears?—A. It did not disappear.

Q. Well, it doesn't appear here, does it?—A. I think it does.

7715 Mr. CRAWFORD. Which one are you talking about now?

Mr. MORRISON. I am talking about defendants' Exhibit 73.

WITNESS. I think, if you will look at it, you will see that it does.

Mr. CRAWFORD. June of what year, Mr. Morrison?

Mr. MORRISON. I had the wrong exhibit.

Q. Who makes out these sheets?—A. They are compiled in the office of the auditor of disbursements on information furnished by the various master mechanics.

Q. The master mechanic gets his information from the trainmen, does he?—A. No, sir.

Mr. CRAWFORD. Won't you distinguish between defendants' Exhibits 73 and 74?

Mr. MORRISON. I am talking now about defendants' Exhibit 73.

Mr. CRAWFORD. That is the waste record, is it?

Mr. MORRISON. Yes.

Q. Where does he get his information?—A. From his records.

Q. How do these records come to you? In what form do you receive them?—A. They are made on a blank report made for that purpose.

Q. What does that report show?—A. It shows the amount of oil consumed and the amount of waste consumed for the lubrication of cars and engines.

Q. What period of time does each report cover?—A. One month.

Q. So you get these reports monthly?—A. Well, they go to the auditor of disbursements first.

7716 Q. Yes, but they finally reach your office?—A. In condensed form; yes.

Q. Who do they come from to you?—A. We get our report from the auditor of disbursements.

Q. Do you know where he gets them?—A. He makes them.

Q. What does he make them from?—A. From reports furnished by the various division master mechanics.

Q. Are you sure that that is the way those reports are obtained—from the various master mechanics?—A. I am certain of it; yes, sir.

Q. How does the master mechanic get the consumption? Does he get it from each train, or how does he get it?—A. No, sir; he keeps

a record of the amount of waste on hand at the first of each month, and the amount received, the amount issued, and the amount on hand at the close of the month. It shows on each monthly report.

Q. Coming now to defendants' Exhibit 74, what kind of a record was this exhibit made up from?—A. From a card record.

Q. Who made the cards?—A. Mr. Curtis's secretary kept this card record.

Q. From what information does he make the card record?—A. From daily train reports furnished by the superintendent of transportation.

Q. By whom are those reports made up?—A. I just told you. The superintendent of transportation.

Q. How does the superintendent of transportation get the
7717 information?—A. I don't know in detail. I don't know the details of how he obtains it.

Q. He must get it from the train men, doesn't he?—A. I don't know.

Q. You never had any experience along those lines?—A. No, sir.

Q. You don't know anything about the preparation of these reports then?—A. The train reports, no sir.

Q. How are these records kept in your office? In book form, bound up, or how are they kept?—A. I believe I just stated that they are kept in card records.

Q. Is that the only way? Keep them in the card record all the time?—A. Yes, sir.

Q. Aren't they transferred to any book?—A. No, sir.

Q. How far back have you cards showing that record?—A. September 1, 1903, with the exception of this month that was short.

Q. Before that time was there any other record kept that is similar to this?—A. No, sir.

Q. Before that time, as I understand you, they kept no record in your office of hot boxes?—A. No permanent record; no, sir.

Q. Did you keep any record of the delays to trains caused by hot boxes prior to this date in 1903?—A. No record from which any data could be obtained as to the actual number of hot boxes.

Q. How about this month of June? What became of that record?—A. I don't know.

Q. Wasn't there anybody that was able to inform you around
7718 there?—A. No, sir.

Q. Whose duty was it to make those records?—A. The secretary to the superintendent of machinery.

Q. Didn't he give any explanation as to why there was no record there for June?—A. I asked him with reference to the month of June and he was unable to account for how they were missing.

Q. Were they ever made?—A. I am inclined to think they were. I couldn't say positively.

Q. And were lost?—A. Yes.

Q. Do you keep those cards in a drawer?—A. Yes.

Q. When did you discover that the month of June was missing?—A. When I was called on to make this report.

Q. You didn't know it before that?—A. I did not know it before that time, no, sir.

Q. Then, as I understand you, you made inquiry and nobody was able to explain it?—A. Yes, sir.

Q. You don't know whether there was ever any report of that month?—A. I couldn't say definitely, no, sir.

Q. Was that all that was missing—that one month?—A. As far as I know, yes.

Q. Defendant's Exhibit 74 I see deals only with locomotives and passenger cars or passenger trains—delays to passenger trains. Have you any record of the delays to freight trains, covering that same period?—A. I have not.

Q. Is there no record in your office?—A. There is not.

7719 Q. Is there a record kept in any other office?—A. Not to my knowledge.

Q. Isn't there some record of the delays of freight trains kept in the operating department?—A. Not to my knowledge.

Q. You are not connected with that department in any way?—A. I am in a branch of that department; the mechanical department.

Q. Would you know if there was any such record?—A. I possibly would know, and possibly wouldn't. I don't know that there is any such record, however.

Q. You don't know that there is not such a record, do you?—A. I don't know that there is not, and I don't know that there is.

Q. Don't you think it quite likely that this company keeps some record of delays to freight trains?—A. It is my judgment that they do not. I don't know.

Q. And that they never have?—A. I don't think that they have kept any special record on hot boxes.

Q. What greater reason is there for keeping a record of delays to passenger trains than there is for keeping a record of delays to freight trains?—A. For the reason that they are a superior class train, and we give them more attention than a freight train, in movement.

Q. Yes, but the freight trains are far more important to railroads, aren't they, than your passenger trains?—A. I don't know that they are.

Q. And delays are quite serious to freight trains, are they not?—A. I should say so.

7720 Q. And by far the greater part of your revenue is made from freight trains, isn't it?—A. I don't know.

Q. You are not posted along those lines?—A. No.

Q. And you say, do you, that you don't know that there is any record kept in any of the offices which will show the delays to freight trains covering this same period?—A. I do not know whether there is or not.

Mr. CRAWFORD. We tried to get it. We would only be too happy to get it. But we have not been successful.

WITNESS. I know that it is not kept in our office.

Q. Do you have any special information on any of these reports that reach your office, as to the cause of the hot box—that is, whether it is defective brass or whether it is defective lubrication, or what the cause is?—A. That information is not shown, as a rule; it may be in some few cases.

Q. Don't the original train reports show it?—A. I don't get the train reports.

Q. That is not the question. Do they show it? The train reports that are made up by the train crew that are on the ground at the time when the hot box occurs.—A. I don't get those reports.

Q. Do you ever see them?—A. No, sir.

Q. Don't you know anything about them?—A. No, sir; I don't know anything about them.

Q. You are entirely unfamiliar with them?—A. Entirely unfamiliar.

7721 Q. How long have you been connected with that office?—A. Since January 1, 1892.

Q. If there is a record showing the specific cause given by the train men in charge of the train when the hot box occurs, that record would give clearer information, would it not, than your records as to the cause of that delay?—A. I can't say that it would.

Q. You simply have a general statement in your report that a train was delayed at such a time and such a place and for so long; that is all you have, isn't it?—A. And the cause; whether it is due to a hot box or defective——

Q. Yes; the cause. Now go on.—A. Or to other causes.

Q. But your reports do not show what caused the hot box, as I understand you?—A. That is true. They do not as a rule. There may be a few cases that do.

Q. If they do, it would be exceptional, is that right, rather than generally?—A. Yes, sir.

Q. What you get, I take it, is a summary, made up by the master mechanic of each division from the train reports; isn't that it?—A. No, sir.

Q. Well, what is it?—A. We get a copy of the daily train report, made by the superintendent of transportation, showing delays to passenger trains, and causes.

Q. Now, what does he make that report up from?—A. I don't know.

Q. Don't you know enough about railroading to know that he must make it up from the train reports?—A. I don't know what he makes it from.

7722 Q. You haven't the slightest idea, have you, sir, what he makes that from?—A. I presume he makes it from some information he obtains. I don't know how he gets it.

Q. From what sources could he obtain information upon that point?—A. I presume he gets it from the local officials. I don't know how.

Q. Local officials are not at the place, ordinarily, are they, where the hot box occurs? If he gets it from them, they must get it from some report from the train men, must they not?—A. I don't know.

Q. How long have you been railroading?—A. I have been in the service since July, 1886.

Q. And you don't know where the original source of information is from which these reports are made up; do I understand you to say that?—A. That is what I say. It may come from various sources. I don't know what sources.

Q. Well, it "may." From what sources may it come?—A. I don't know.

Q. You can't imagine how that original information is gathered, can you?—A. I don't know. I don't have anything to do with that report.

Q. You are riding over railroads very often, aren't you—a good deal of your time?—A. Yes, occasionally.

Q. You have been on trains where there have been hot boxes, haven't you?—A. I have.

Q. You have heard the matter discussed, haven't you, in your office?—A. I don't know as I have heard any particular
7723 discussion on it.

Q. Don't you know that train men make a written report of every hot box that occurs on the train, and that that report is sent to some officer connected with that railroad company?—A. I don't know it; no, sir.

Q. Do you know how the master mechanic gets the knowledge from which he makes up his statement?—A. I do not know that he makes any statements.

Q. He doesn't make any report to you, does he?—A. No, sir.

Q. Or to your office?—A. No, sir. He occasionally reports on a specific case, but no general report.

Q. Only occasionally?—A. Yes, sir.

Q. Under what circumstances does he make a specific report, or in what class of cases?—A. If there was an unusual case, which was under investigation from our office, he might report on it.

Q. If he makes such a report, he would have to get his information from the train men, wouldn't he, or somebody on the ground at the time of the hot box?—A. I don't know.

Q. Your information has never reached out to that extent, has it?—A. No, sir.

Q. You never imagined, did you, nor thought, how the officials of your company got the information concerning hot boxes?—A. No.

Q. You supposed they all originated, didn't you, right on those cards and that was all there was to it?

Mr. CRAWFORD. He hasn't said that.

Mr. MORRISON. Well, I am asking him that.

7724 Mr. CRAWFORD. He has stated that the cards were made up from the reports.

Mr. MORRISON. Yes.

(The last question was read.)

A. No, sir; I didn't presume it originated on the cards.

Q. Did you presume that it originated on those reports that were handed in to you?—A. No, sir; I didn't presume anything about it.

Q. Why didn't you?—A. Didn't have any occasion to.

Q. Now, what you mean to say is that you have no knowledge whatever of the original sources of information concerning the hot boxes that occur on the trains of the railroad which employs you?—A. What I mean to say is that I have no knowledge as to how the information is obtained from which the daily train reports are made; no perosnal knowledge.

Q. You say "no personal knowledge." What do you mean by that?—A. I mean that I have no personal knowledge.

Q. You have no personal knowledge, do you mean, as to how or as to why a particular hot box should become overheated; is that what you mean? Or that you have no particular knowledge as to how the information concerning it reaches your office?—A. I have no personal knowledge as to how the information is obtained that reaches our office.

Q. You said that the figures $2,603.70 on defendants' Exhibit 73 were an estimate; and you said something about "as stated below." Did I understand you correctly that it is somewhere stated in this exhibit that these figures are an estimate?—A. It is.

7725 Q. Where?—A. The last clause.

Q. Who made that estimate?—A. I did.

Q. Couldn't you get at it accurately?—A. No, sir.

Q. Hadn't you any records?—A. No, sir.

Q. How did you arrive at that conclusion, then, if you have no records?—A. Estimated it on the basis of the amount of waste it takes under the Galena contract to pack boxes.

Q. To pack a box, or to pack the boxes on a car?—A. To pack the boxes on a car.

Q. And that is the only way you could estimate it?—A. I estimated it on the basis of what it takes now to pack boxes on the same class of cars.

Q. How much does it take to pack a box?—A. Different classes of cars take different amounts.

Q. Now, tell what it takes in each class, and describe the class?—A. I have a memorandum there that gives that information. May I see it?

[Mr. Crawford hands witness papers, the first sheet being Mr. Curtis's leter of January 14th.]

WITNESS. The estimate is made on the basis of 10 pounds of waste per car for caboose and box cars, and 16 pounds for stock cars, flat cars, and gondolas.

Q. Are those new cars?—A. New cars; yes, sir.

Q. Let me ask you whether the waste upon which you based your estimate is the same as you now say it takes to pack a box?—A. It averages the same; practically the same.

Q. What price per pound did you use in making this esti-
7726 mate of $2,603.70?—A. 9 cents per pound.

Q. How do you know that that was the agreed price?—A. That is the price that the waste was charged at during those months.

Q. It didn't vary during that 11 months' period did it?—A. No, sir; I think not.

Q. Do you know where that was purchased—who from?—A. I do not.

Q. You found it on your books, I suppose?—A. Yes. I inquired of the purchasing agent, too, in reference to the matter.

Q. He told you to figure it at 9 cents?—A. He said the cost was 9 cents; yes, sir.

Q. Is there any difference in the quality of waste? Does some waste cost more than others?—A. I presume it does. I didn't exactly understand your question. Do you mean the waste that was used in these cars or not?

Q. Well, waste in general.—A. Of course, you can buy waste at any price; that is, I mean to say, various prices.

Q. There are different grades of waste, I suppose, and different prices?—A. Yes, sir.

Q. Do you know how long this railroad has used the same grade of waste?—A. I do not.

Q. Do you know whether they were using the same grade of waste in 1904 and 1905 that they were in 1906 and 1907?—A. Paying the same price.

Q. How do you know that?—A. From our records, and the information obtained from the purchasing agent.

7727 Q. You asked him about both years, did you?—A. I did.

Q. Did you buy of the same concern?—A. I don't know.

Q. Who did you buy of during those two years?—A. I don't know.

Q. You said for a time after making the contract with the Galena-Signal Company that the New York oils were used by some understanding? What understanding do you refer to?—A. I presume it was an understanding made between the Galena-Signal Oil Company and the representatives of our company.

Q. I am not asking you what you presume. Do you know anything about it?—A. I don't know anything about it of my personal knowledge.

Q. Then that is all voluntary on your part, and mere guesswork, isn't it?

Mr. CRAWFORD. It is in the contract.

Mr. MORRISON. I am talking about what the witness knows.

Q. As far as you are concerned, that is all voluntary and mere guesswork, isn't it?—A. We have a copy of the contract.

Q. Were you testifying from what you have read from the contract?—A. I am testifying from what I understood with reference to the matter.

Q. What you understood from what source? From the contract, or from what you heard somebody say?—A. From the contract.

Q. Then you can't add anything to what is in the contract on that subject, can you?—A. No.

Q. Where is that contract that you saw?—A. We have a copy of the contract in our office.

Q. When did you last see it?—A. I couldn't say definitely.

Q. When did you first see it?—A. I saw it about the time the contract was made.

Q. When was that? In March, 1905?—A. In March, 1905.

Q. How did you happen to see that contract?—A. A copy of the contract was furnished our office.

Q. Did Mr. Curtis have it?—A. I don't think that he did.

7728 Q. He is the chief in your office, isn't he, the head of it?—A. He is the superintendent of machinery.

Q. And you are in his office as chief clerk, aren't you?—A. I am.

Q. How does it happen that you saw it and Curtis never saw it?—A. Because I make up all the oil statements and handle it, and he had no personal need of it.

Q. Whereabouts in your office was it kept?—A. Kept in our files.

Q. Whereabouts—in the vault, or where, or in some drawer?—A. In the file case.

Q. From whom did you receive it?—A. I think a copy was sent to us by the purchasing agent.

Q. By mail?—A. Yes.

Q. And was it received by you?—A. It came to me.

Q. And you put it in the files, did you, in the vault?—A. Put it in the files.

Q. Well, it got into the vault, you said, didn't you?—A. We had no vault; we have a file room.

Q. Didn't you say in the vault a little while ago?—A. I meant the file room.

Q. It has been there ever since, so far as you know?—A. No.

Q. Where is it?—A. Taken out whenever we had need to refer to it.

Q. Is it there now?—A. It is, so far as I know.

Q. Do you open mail that is addressed to Theodore H.

7729 Curtis?—A. No, sir. Well, I do occasionally. The mail is all opened by one man, as a rule.

Q. Who does open the mail there?—A. The file clerk.

Q. What does he do with it when he opens it?—A. He distributes such as he knows is of minor importance to those that handle it, and the other he places on my desk, as a rule.

Q. Did you ever see the New York Lubricating Oil Company's contract in your office?—A. I don't know that I saw the original contract.

Q. Did you have a copy of it that was furnished to you by that company?—A. I ain't sure whether we had the copy of it or not.

Q. Do you mean that you don't remember whether you ever saw that contract or a copy of it?—A. I think I have seen it; yes.

Q. Where; in your office?—A. Yes.

Q. When?—A. About the time the contract was made, or later; I don't remember the exact date.

Q. Where is it now?—A. I don't know.

Q. Let me ask you a little further about these train cards. You say you have no cards back of September 1, 1903. Do you know whether or not that same record, or a record showing the same information, was kept in any other department of that company prior to the time that it first appeared in your office?—A. Not to my knowledge.

Q. Might it not have been kept in the operating department
7730 or some other department before that?—A. It might have, yes; but not to my knowledge.

Q. When did you say you went into the service of this railroad company?—A. In July, 1886.

Q. In what different departments have you been employed?—A. All this time in the mechanical department.

Q. In what you might term the bookkeeping end of the mechanical department, is that it?—A. Yes; clerical.

Q. And do you say that there was no record kept in any of the departments or in any office in which you have worked for that company since 1886 showing the same information that is now kept on those cards?—A. I say there has not.

Q. But whether or not that information was gathered and kept in some other department or by some other means you, of course, do not know?—A. I, of course, do not know.

Q. Do you know how they happened to commence keeping it in your office on September 1, 1903?—A. I don't know the particulars in reference to it, except that we thought it would be a good record to keep, and at that time we were having some delays to passenger trains and wanted to keep a record of them.

Q. Well, hadn't you had delays before that?—A. I don't think in quite so large numbers.

Q. Haven't your delays gradually decreased year by year, and don't your records show it, ever since you have been in the office?—A. No, sir.

Q. Have they increased?—A. We have no records back of September 1, 1903.

7731 Q. You say you haven't in your office, but you have already said that it might have been in other offices. And that is true, isn't it?—A. It might have been; yes.

Q. Might have been kept in other offices. You mean to swear now that there were more delays along about September 1, 1903, than there were before that?—A. I don't swear that there were more; no.

Q. I think you said that you continued to use these New York oils—I assume what you had on hand when the Galena-Signal con-

tract was made—until they were used up. Is that right?—A. Continued to use the New York oils that were on hand until they were used up; yes, sir.

Q. What do you mean by "on hand?"—A. I mean the oil that was on hand when the Galena Oil Company made the contract.

Q. At what places?—A. At various places.

Q. At the various divisions?—A. Yes, sir.

Q. In the oil houses, I suppose?—A. Yes, sir.

Q. There are oil houses on every division, are there not?—A. Nearly every division; yes.

Q. And this oil, I assume, was distributed throughout your system to the various oil houses?—A. How is that?

Q. This oil—New York oil I am talking about now—had been distributed to the various oil houses throughout your system, had it not?—A. Yes.

Q. So that it was on hand in the various oil houses when the Galena-Signal contract was made?—A. As far as I know.

7732 Q. And you continued to use that oil until it was all used up?—A. Yes.

Q. And I assume, then, it would be used up sooner on some divisions than it would be on others?—A. Possibly so; yes, sir.

Q. And in that event you would be lubricating a train in one division with Galena-Signal oil and in another division with New York oil, wouldn't you, until the New York oil was entirely consumed?—A. Possibly so; yes.

Q. You say "possibly;" that would necessarily be so, wouldn't it, trains passing from one division to another? It couldn't be otherwise, could it?—A. Most likely to be so; yes.

Q. Now, you said that there had been, as you estimated it, 4,000 new freight cars put on in the year 1906–7; is that right?—A. I merely make that as an estimate. I don't know the exact figures. I can get them, if necessary.

Q. What is that estimate based upon? You have got the actual figures in your office, haven't you?—A. Yes, sir.

Q. Have you got them here?—A. No, sir.

Q. Then, that is a mere guess?—A. It is an estimate, yes, sir; that is what I stated.

Q. What is that?—A. I stated it was an estimate, I think.

Q. Why didn't you get the exact figures?—A. If I had known you wanted them I would have got them.

Q. Did you make that estimate up after you got here as a witness?—A. From my general knowledge of the number of cars built I made it up; I merely made an estimate from my general knowledge of the number of cars built.

7733 Q. You didn't think over that subject, did you, until you were called upon to testify?—A. I didn't need to think it over.

Q. Well, you didn't think it over, did you? I am not asking you what you needed.—A. No; I didn't think it over.

Q. That was just simply your offhand notion after you took the witness stand here?—A. Yes.

Q. That is all there is to it, isn't it?—A. I made it as an estimate; yes.

Redirect examination by Mr. CRAWFORD:

Q. Whatever your understanding was about the use of New York oil, or wherever you got it, whatever may have been the fact about any unevenness on the different divisions in the time that the oil would be used up, what was the fact as to the oil which was used on the Louisville & Nashville in March, April, May, and June, 1905?—A. Principally New York oils.

Q. What do you say as to March, April, and May, 1905? Those are the first three of the four months that I asked you about.—A. How is that? The first period?

Q. You say in the four months, March to June, 1905, it was principally New York oils. Now I ask you about the first three of those four months, whether you make the same answer.—A. The same answer; yes sir.

Q. What do you mean by "principally?"—A. I mean that the cars and engines were lubricated principally with New York oils during that time.

7734 Q. What do you mean by "principally?" Can't you give anything closer than "principally?"—A. The greater quantity, or very large percentage; in fact, practically all of it, you might say, was New York oil.

Q. Now, will you look at defendants' Exhibit 73? I understand you state that that was made up by you, with the assistance of a stenographer. Is that your testimony?—A. Yes, sir.

Q. That is to say, you took the data from the sheets, did you, which went to your office?—A. Yes, sir.

Q. And will you say whether that Exhibit 73 is a correct tabulation of the information so transcribed by you from these sheets in your office which contain the information as to the waste?—A. To the best of my knowledge it is.

(The hearing was then adjourned until the morning of Friday, June 26, 1908, at 10.30 o'clock.)

7735 ROOM 722, CUSTOM-HOUSE, NEW YORK CITY,
Friday, June 26, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Charles B. Morrison and Mr. J. Harwood Graves; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. F. L. Crawford, and Mr. W. Cleveland Runyon.

EDWARD S. HEDGECOCK, recalled on behalf of the defendants, and his redirect examination resumed, as follows:

By Mr. CRAWFORD:

Q. Mr. Hedgecock, yesterday you testified in regard to the number of freight cars that were added at certain periods on the Louisville & Nashville Railroad. You were also interrogated by Mr. Morrison, I think, in regard to the number of locomotives that were added. Have you looked up those figures since yesterday, or some of them?—A. I can't give the figures for the exact period, but I can give them for the years 1904, 1905, 1906, and 1907, which ended on June 30 of each year.

Q. Where did you get those figures?—A. From the printed annual reports of the Louisville & Nashville Railroad for the years mentioned.

7736 Q. I show you a paper. Refreshing your memory by that, will you state what the number of freight cars is as shown on the annual report of the Louisville & Nashville road, added during the fiscal year 1906–7? That is the year, as I understand it, from July 1, 1906, to July 1, 1907.—A. The number of new freight cars added during the year 1906–7 is 4,499.

Q. You were asked also in regard to the addition of locomotives. What did you find to be the number of new locomotives added during the fiscal year from July 1, 1904, to July 1, 1905?—A. 22 locomotives.

Q. And what did you find to be the number of locomotives added during the year from July 1, 1906, to July 1, 1907?—A. That question is not exactly clear, Mr. Crawford. It is not the number of locomotives added, but the number of new locomotives bought and built. I only took off the number bought and built—new locomotives.

Q. Well, the number of new locomotives bought or built during that year?—A. The number of locomotives bought and built, that is, new locomotives, for the year 1904–5, was 22.

Q. And 1906–7?—A. For the year 1906–7, 127.

Q. Do those numbers indicate the number of locomotives which went into service during the respective periods—new locomotives that went into service on the road?—A. Yes, sir.

Q. Since the present Galena contract went into force, in March, 1905, what method of accounting has been adopted in regard to the cost of packing new freight cars? Against what has that been

7737 charged?—A. The packing for new freight cars under the Galena contract has been charged to the cost of the equipment.

Q. And not against the Galena contract?—A. And not against the Galena contract.

Q. Therefore, you didn't deduct anything from the cost of waste in the Galena statement, although you did deduct it under the New York statement; is that correct?—A. During the New York period I made a deduction for waste used in packing new equipment, for the reason that it was charged in to the cost of lubrication. During the

period of the Galena contract we made no deduction, for the reason that it was charged to the cost of the equipment.

Q. And not against the Galena company?—A. And not against the Galena-Signal Company.

Q. I show you Defendants' Exhibit 71, and call your attention to the fact that the direction or request is for the comparative statement for the period beginning June 1, 1904, to June 1, 1905, and June 1, 1906, to June 1, 1907. Defendants' Exhibits 73 and 74 are for slightly different dates, Exhibit 73 being from July 1, in one year, to the end of June in the next year, that is to say, for 12 months, from July 1 to July 1, and Defendants' Exhibit 74, relating to hot boxes, covering from July in one year to May in the next year, inclusive. Will you state why in getting up this information you deparated from the strict letter of that instruction? I show you the exhibits.—A. I did so by verbal permission from the fourth vice-president's office, and for the reason that the accounts are kept,

7738 that is, as regards mileage, etc., for the fiscal year, and could be better verified by the annual statements.

Q. Is that the reason why you made up the waste statement, Defendants' Exhibit 73, for 12 months, from July to July?—A. Yes, sir.

Q. Now, Defendants' Exhibit 74 has only 11 months upon it. You testified yesterday as to a certain month of June when the cards were missing. What year was that month of June?—A. The cards were missing during the month of June, 1905.

Q. And everything that you testified to in regard to missing cards yesterday referred to June, 1905, did it?—A. Yes, sir.

Q. And not to June, 1904?—A. No, sir.

Q. These cards that you testified to yesterday, which, as I understand you, you found complete from September, 1903, down past the period when Exhibits 73 and 74 were compiled, except for the month of June, 1905, are part of the permanent records of your office, are they not?—A. Yes, sir.

Q. So far as you know, since they began to be kept at all they have been kept regularly there as a permanent record?—A. Yes, sir.

Q. Where are all the cards kept?—A. They are kept in a regular filing drawer for that purpose—filing case.

Q. Kept in regular order and according to date?—A. Yes, sir.

7739 Q. From what are those cards made up?—A. The cards are made from the daily train report furnished by the superintendent of transportation.

Q. How often do you get a daily train report in that office?—A. They are presumed to be made daily, but occasionally there may be two days coming at one time, or three days.

Q. At any rate, you get a report covering every day, do you?—A. We get a report covering every day.

Q. And from those daily train reports the cards were made up by transcribing the proper items?—A. Yes, sir.

Q. And that is part of the regular routine of your office, is it?—A. It was at that time; yes, sir.

Q. It was, down to the close——A. Down to the close of the period; yes, sir.

Q. Down to the close of the period mentioned in Defendants' Exhibits 73 and 74, at any rate?—A. Yes, sir.

Q. I show you a number of cards. State whether these are cards taken from your regular files of cards to which you have been testifying.—A. They are cards taken from our regular file.

Q. Without specifying the details, state generally what the cards purport to include.—A. They purport to include delays to passenger trains account of mechanical failures, including hot boxes.

Q. I show you defendants' Exhibit 75. Is this one of the cards from your file?—A. It is.

Q. For what date does it purport to cover the delays?—A. It covers delays shown on report dated August 1, 1904.

Q. Does that mean the delays that were on the daily train
7740 report of that date?—A. On the daily train report of August 1.

Q. And from whom does the daily train report of that date come to you?—A. From the superintendent of transportation.

Q. And it is part of his duty to compile that report, is it, in the way in which your business is organized?—A. I presume it is. He furnishes the report.

Q. You know, at any rate, that as long as you have been there, at least since September, 1903, those train reports have been coming in?—A. Yes, sir.

Mr. CRAWFORD. I offer in evidence Defendants' Exhibit 75. It is understood that a copy may be substituted, I suppose?

Mr. MORRISON. Yes.

Q. Now, what ones of the items on Defendants' Exhibit 75 were transferred to the table which is included in Defendants' Exhibit 74?—A. Train No. 1 (30) 10 minutes at Worthville packing two boxes on postal No. 70 and a coach. 24 minutes La Grange; same cause. 25 minutes Cave City, hot box, postal car 70. 10 minutes at Louisville putting two brasses in postal No. 70. 5 minutes on run, brassing sleeper Spencer. 1 hour and 5 minutes on run, account of hot truck, engine No. 128. Train No. 2, 55 minutes on run, account of hot box, truck of engine No. 267.

Q. What item from this card have you omitted from the table?—A. We have omitted from the table train No. 1, 45 minutes on run, pin on eccentric slipping and putting engine No. 268 on one side at Ft. Deposit.

7741 Q. Why did you not include that item?—A. Because it was not a delay due to hot boxes.

Q. Were all the other delays mentioned there delays which were caused by hot boxes?—A. Yes, sir; hot boxes and brasses on bearings.

Q. And they were therefore included. Now, in transcribing these records throughout, for the purpose of making up these tables, have you followed the same practice?—A. The same practice; yes.

Q. That is to say, you have only taken the items of delay caused by hot boxes or hot bearings?—A. Yes, sir.

Q. What is done with the daily train reports in your office after they are received?—A. We look over them, and if there are any items of delays due to the mechanical department which we consider need special investigation we take them up independently; and these cards were at that time transcribed from the reports, and the reports held probably one, two, or three months and destroyed.

Q. Have you the daily train reports from which the cards were transcribed?—A. I have not.

Q. And from which cards the tables were made up?—A. I have not.

Q. I show you certain papers. Please state what they are.—A. They are daily train reports furnished by the superintendent of transportation for the month of May, 1908.

Q. Where did you get these when you brought them here? (Referring to papers.)—A. They are taken from our office.

7742 Q. I show you defendants' Exhibit 76. Is this one of the daily train reports which you were just testifying about?—A. It is.

Q. What date does it cover?—A. Daily train report dated May 2, 1908.

Q. Is that one of the reports which you received from the superintendent of transportation?—A. It is.

Q. On or about May 2, 1908?—A. Yes, sir.

Q. Does that fairly represent the train reports that you have been testifying about?—A. It does. Made in the same form.

Q. Since the year 1903 has there been any change in the form in which the train reports have been received, that you know of?—A. No, sir.

Q. All have been substantially of this form?—A. All substantially the same form.

Mr. CRAWFORD. I offer in evidence defendants' Exhibit 76. It is understood, I suppose, that a copy may be substituted for that?

Mr. MORRISON. Yes.

Recross-examination by Mr. MORRISON:

Q. In defendants' Exhibit 76 a hot box is shown, and I find here, in the first paragraph, a statement "18m," which I suppose means minutes, "Scranton by brass slpr." What does that mean?—A. It means "Sleeper," I think.

Q. Just look at it.—A. That is "18 minutes Scranton by brass sleeper Brandon."

7743 Q. What occasioned the putting in of a new brass there—a hot box?—A. Yes, sir.

Q. Following right along there, "4 minutes Lake Catherine, hot box, same car." Is that the same hot box?—A. I couldn't say.

Q. It is on the same car.—A. There are six boxes on the car. I couldn't say whether it is the same one or not.

Q. The reports don't show anywhere, do they, what box on a particular car is hot? The reports do not show what box on a car is hot, do they?—A. No, sir.

Q. Does this indicate that there was a new brass put in twice on that same car?—A. It doesn't say so.

Q. No; but is that what it means?—A. Not necessarily.

Q. Do you put in a new brass every time there is a hot box?—A. No, sir; not every time.

Q. What is the difference between the two notations—the one that says 18 minutes at Scranton "by brass sleeper," and "4 minutes at Lake Catherine, hot box, same car?" Explain what that means. What is the difference between the two notations on that report? The one is the notation of a brass on the sleeper, and the other is a hot box.—A. I didn't make the report.

Q. I know, but don't you know what it means?—A. My opinion is that in the one case they put a brass in the car, and the other was a hot box.

Q. In making up your cards here, would you put that in as two hot boxes?—A. Yes, sir.

7744 Q. Might there not be a defective brass and not a hot box?—A. Very rarely, for which you would have to stop on the road to put in a brass.

Q. Can you tell from this report whether the brass was put in before the stop at Lake Catherine or after the stop at Lake Catherine?—A. I can not personally say. I don't know whether Scranton is north or south of Lake St. Catherine.

Q. You are not able to determine from this report. Might this not be the fact; that they stopped the car at Lake Catherine and attempted to repack the box, and then, when they got to Scranton, that they took out that packing and put in a new brass in the same box?—A. I don't know that that is the case.

Q. That may be, may it not?

Mr. CRAWFORD. I object to that as speculative.

A. I don't know which they did first.

Q. So far as this report is concerned, then, you are unable to state whether or not the trouble was all with one box, or whether it was two boxes on the same car?—A. I am unable to say.

Q. Isn't it quite common that after you put in a new brass, before it is thoroughly broken in and in working order, it becomes overheated and that you have to stop and repack it?—A. I am not a mechanical expert, and I don't know as I can answer that question.

Q. You mean you don't know, is that it?—A. Yes.

7745 Q. Then, you are unable to tell from this report whether there was more than one box involved here or not?—A. That is what I said, yes, sir.

Q. But in making up your cards from this report, you put it in as two, didn't you, or you would put it in as two?—A. We put it in as two delays. We didn't put it in as two boxes, we put it in as two delays.

Mr. ROSENTHAL. Our reports are entitled "Delays due to hot boxes."

Q. Would you put in this first one here, where a brass was put into a sleeper at Scranton, as a delay on account of a hot box?—A. I did, yes, sir.

Q. And all your cards are made up on that theory, are they?—A. On that basis, yes, sir.

Q. As I understand you, then, wherever there is a delay shown in the report, to be caused by putting in a brass, or where brass is mentioned, that you put down on your card as a delay on account of a hot box?

Mr. ROSENTHAL. No, that is not what he said.

A. No, I didn't say that.

Q. What do you say about it?—A. I say we put it on our card as delay due to brassing sleeper; just exactly as we put it on that report, whatever that may be.

Q. Defendants' Exhibit 74 doesn't say anything about brasses; it speaks entirely of hot boxes. What I want to get at is this: Whether you put it down as a delay on account of a hot box in all cases where the word "brass" is mentioned in the report.—A. If it is due to brassing the car, yes.

7746 Q. What becomes of the brasses that are removed from cars on account of hot boxes?—A. They are turned in to the scrap, as a rule.

Q. Are they returned to anybody or to any department for inspection?—A. A special inspection is not made of every case; there may be an individual case, occasionally, where an inspection is made.

Q. It would be exceptional?—A. Yes.

Q. You have never had any practical experience in the operation of trains, have you?—A. No, sir.

Q. And you know nothing, as I understand you, except what you learn from these reports, about the cause of delays?—A. So far as that record goes, that is all I know about it, yes; the records we have submitted.

Q. You mean by that that is all you know from this record?—A. All I know regarding the report we made up is with reference to that record.

Q. Who makes out these reports? I see this is signed by C. B. Phelps.

Mr. ROSENTHAL. We will put Mr. Phelps on.

A. The report was made in Mr. C. B. Phelps's office. He is the superintendent of transportation.

Q. I will ask you to look over defendants' Exhibit 76 and see whether there is anything on this sheet, aside from what you have already testified about, that you would put down as delay on

7747 account of a hot box, on your cards.—A. I do not see any other delays that would be classed as due to hot boxes.

Q. How many delays on account of hot boxes are shown by defendants' Exhibit 75?—A. 7 delays due to hot boxes and brassing of cars.

Q. How many are due to hot boxes?—A. 5 are shown on this report as due to hot boxes, and 2 due to brassing of cars.

Q. How many did you include in defendants' Exhibit 74 as due to hot boxes?—A. 7.

Q. Then, defendants' Exhibit 74 is not correct, is it?—A. I think it is.

Q. That is, you think it is correct to say that a delay is due to hot boxes, whether it is due to a hot box or whether it is due to the fact that new brasses, for some reason which you do not know, are required on some car?—A. I think it is, when the brasses are put in as indicated on these reports and cause delays to trains.

Q. You just said, didn't you, that there were only 5 delays on account of hot boxes shown by defendants' Exhibit 75?—A. I say the report reads 5 delays due to hot boxes.

Q. Those are all the delays, then, that were due to hot boxes, so far as you know; is that not so?—A. 5 due to hot boxes and 2 to brassing.

Q. I again ask you, then, whether you think defendants' Exhibit 74 is correct.—A. I think it is.

Q. You mean by that, that in making out defendants' Exhibit 74 you put into it delays on account of hot boxes, in all cases
7748 where there was a delay because brasses had to be put into the box?—A. Where they were delayed on the road, yes.

Q. In making up Defendants' Exhibit 74, have you put in all of the delays, mentioned upon these cards, as delays on account of hot boxes?—A. No, sir.

Q. In what cases have you not done so?—A. Such delays as were due to breakdowns of engines, and other mechanical defects than hot boxes, are not included in this report.

Q. Let me call your attention now to the first statement on Defendants' Exhibit 75, which reads "No. 1 (30) 10 min., Worthville packing two boxes on postal #70 and a coach." In making up Defendants' Exhibit 74, how many delays on account of hot boxes did you put in because of the statement which I have just read you from that card?—A. One delay.

Q. How do you know that there was any hot box there at all?—A. I have a report of it from the superintendent of transportation.

Q. You have a report that there was a delay there because they had to pack two boxes; that is your report, isn't it?—A. That is it; yes, sir.

Q. How do you know that that was on account of a hot box?—A. They would hardly pack it unless it was hot.

Q. How do you know but what that was because the box was defectively packed in the beginning, and that it was discovered and repacked?—A. Such a case is hardly likely.

Q. How do you know, sir? Do you know anything about
7749 the packing of boxes, yourself?—A. I am no expert at packing boxes, no.

Q. You have never had any experience in it at all, have you?—A. No.

Q. Never packed a box in your life, did you?—A. No.

Q. All you know about it is what you learn from the records that are presented to you?—A. That is it, exactly.

Q. Then, you don't know whether there was a hot box here, or whether there wasn't, do you?—A. I assume there was a hot box, or it would not have been repacked.

Q. Now, did they have any more trouble on account of this same car, as shown by this card, Defendants' Exhibit 75, on that same run?—A. They had trouble with the same car, yes.

Q. How many times, on that run?—A. Three times are reported.

Q. Was it the same box each time?—A. I could not say.

Q. The report made to you, or the report from which these cards were made, wouldn't show whether or not it was the same box each time, or whether it was different boxes on the same car?—A. No, sir.

Q. Do you know which way that train was going?—A. The train was moving south.

Q. Is Worthville north or south of La Grange?—A. It is north of La Grange.

Q. Then, they packed two boxes on that car at Worthville; later along the same car was delayed, for the same cause, was it not, at Cave City, as shown by that card?—A. Yes, sir.

7750 Q. How far north of Cave City is Worthville?—A. I don't know the exact distance.

Q. About how far is it?—A. I imagine it is about 105 or 110 miles.

Q. That was a postal car, wasn't it?—A. Yes, sir.

Q. Postal car No. 70, is that right?—A. Yes, sir.

Q. According to this card, then, you were delayed 10 minutes packing two boxes on this car, at Worthville; and you were delayed 24 minutes at La Grange, for the same cause, were you not?—A. Yes, sir.

Q. Was it the same box?—A. I have told you I don't know whether it was the same box or not.

Q. How far is it from La Grange to Louisville?—A. About 30 miles.

Q. Louisville is south of La Grange, is it not?—A. Yes, sir.

Q. When you got down to Louisville you put in two brasses in the same car, is that so, as shown by this card?—A. Yes, sir.

Q. Does that card show, or have you any information or knowledge as to whether or not those brasses were put in the same boxes that had been packed at the other two places?—A. I have not.

Q. Is there anything on this card that will show whether or not these delays were caused by hot boxes or whether they were caused by imperfect brasses or other imperfections in the mechanical ar-

7751 rangements of the car?—A. The cards indicate that five of the delays were due to hot boxes, and the other two to brassing sleepers.

Q. Which do you say the card indicates were caused by hot boxes?—A. 10 minutes at Worthville, in packing two boxes on postal

No. 70 and a coach; 24 minutes at La Grange, same cause; 25 minutes Cave City, hot box in postal No. 70.

Q. Now you are talking about the one car all the while.—A. I am talking about delays.

Q. Let me ask you in reference to that same car—is there anything on the card to show that those delays were caused by defective lubrication?

Mr. ROSENTHAL. If he knows what defective lubrication is.

Mr. MORRISON. I am asking him whether the card shows it.

A. The card only indicates that the delays were due to hot boxes, brassing sleepers, etc. It doesn't give the cause of the hot box.

Q. Is defective lubrication the only cause of a hot box?—A. I am not an expert in that line.

Q. Now, as I understand you, you don't know, either from any personal experience that you have had in the business, or from these cards, or from the reports from which these cards were made, whether any of these delays were on account of defective or improper lubrication? Am I right about that?—A. I only know what the cards show.

Q. Now, this card doesn't purport, does it, on its face, to show delays on account of defective or improper lubrication?—A. It doesn't specify defective lubrication.

7752 Mr. ROSENTHAL. It specifies hot boxes, doesn't it?

Mr. MORRISON. Oh, no, it doesn't say a word about that, not a word.

Q. Here is what it does purport to be—a report of delays to trains account of mechanical department failures. That is the heading of the card, isn't it?—A. That is the heading of the card.

Q. So that these delays, according to this card, were on account of failures in the mechanical department; isn't that so?—A. That is what the card reads.

Q. That is probably correct, isn't it?—A. They are due to what is commonly classed as mechanical failures.

Q. Yes; mechanical failures.—A. Which would include hot boxes.

Q. So that the delays shown upon these cards are due to any kind of a mechanical department failure?—A. Yes, sir.

Q. Who prepares this heading for these cards?—A. They were prepared in our office.

Q. By you, or by whom?—A. No, sir, not by me; by the secretary to the superintendent of machinery.

Q. Don't you know that it is the common practice of conductors and train men, when they discover that a box is improperly or defectively packed, to call attention to it and to have it repacked before they start out on the run at all?—A. No, sir; I do not know that that is the common practice.

7753 Q. You mean, I suppose, that you don't know anything about that; is that what you mean?—A. I mean what I said.

Q. What is that?—A. I said I didn't know that that was the common practice.

Q. Do you know anything about it? Do you know that it is not the common practice?—A. No; I don't know that it is not.

Q. Do you know whether or not it is the common practice among train men, when a box becomes slightly heated, to stop and remedy the packing somewhat without taking it all out, and be delayed a few minutes and then go on, and perhaps at another station put in some more packing or change it about, in the attempt to get through to the end of the run, and that finally they are compelled to take out the brasses and put in new brasses and repack the box?—A. Do I know that is common practice?

Q. Yes.—A. I don't know of my own personal knowledge; no. In my opinion that is the practice.

Q. That is probably what happened to car No. 70, is it not, taking the reading of that card?

Mr. CRAWFORD. I object to the question because the witness has shown that he has no such personal knowledge as would entitle him to an opinion. Moreover, he is here to testify to facts and not to matters of opinion.

A. I really couldn't say whether it is or not; it might have been, and it might not.

Q. What does "(30)" mean on Defendants' Exhibit 75, in the first line?—A. It means that it was reported in that manner
7754 on the superintendent of transportation's report of the same day.

Q. What is the "30" there? 30 what? Is that the number of the report?—A. I couldn't state positively, but my opinion is that No. 1 is the through train from Cincinnati to New Orleans; leaves Cincinnati one date and arrives at New Orleans on the next date. I take it that the "30" indicates the date that it left Cincinnati, and the report was made of the date that it arrived.

Q. This morning you gave the number of new freight cars, which you say you took from the printed annual reports. Where are those reports? Have you got them here?—A. No, sir.

Q. Yesterday afternoon in your examination you were not able to tell; you could only estimate it.

Mr. CRAWFORD. Ask him where he saw them. I don't object to that.

Q. And now you state positively this morning the number, and you say from the printed reports. Where are the printed reports that you examined since you testified yesterday?—A. In the office of the second vice-president of the Louisville & Nashville Railroad.

Q. That is here in New York City, is it?—A. Yes, sir.

Q. You went over there and examined them so that you might state accurately and definitely the number, did you not?—A. I went over to examine them for the reason that yesterday I estimated that there were 4,000 cars built during the period of 1906–7. I merely wanted to verify that statement.

7755 Q. How do you know that all of those cars went into service on that road during that year?—A. Because they go into service as soon as they are delivered.

Q. Do you know that they were delivered to the company for use during that year?—A. They were built by the company, the greater part of them.

Q. They were built by the company?—A. Yes.

Q. That is all you know about it, isn't it?—A. Yes.

Q. And that is all the report shows?—A. Yes, sir.

Q. The report does not show when those cars went into service, that you examined, does it?—A. The report does not show: no, sir.

Q. You said the locomotives bought or built, as shown by that report, were 22 in 1904–5 and 127 in 1906–7. How many of those were bought, do you know, and how many were actually built by your company?—A. I can't say exactly.

Q. And you don't know how many of them went into service during that year, do you?—A. I know that practically all of them went into service.

Q. How do you know?—A. For the reason that we have the engine mileage in our office, and I know that they made mileage during that year.

Q. Does that show the number of engines?—A. Yes, sir.

Q. And have you examined that so that you know that all those engines that you are testifying about went into service during that year?—A. I know that all of the engines we bought and built during that year went into service.

7756 Q. You know that now because you have seen the mileage; is that it?—A. I have seen the mileage in our office; yes—the mileage reports.

Q. What was the number of miles?—A. I don't know how many miles each one made.

Q. How many engines were in service during that year?—A. You mean engines that were in service during 1904–5?

Q. Yes.—A. (After referring to paper.) About 700 engines.

Q. What paper do you read from?—A. A memorandum I have here.

Q. What is it taken from?—A. Taken from the annual report showing the number of engines on hand at the end of June, 1904.

Q. Does that show the number on hand at the end of June, 1905?—A. I should have said June, 1905, instead of 1904.

Q. Does it show what was on hand in June, 1904?—A. No; I haven't that information.

Q. That memoranda you took, did you, last night, from the report?—A. No, sir; this morning.

Q. When did you make that up?—A. This morning; to-day.

Q. From what?—A. From the annual reports.

Q. What annual reports?—A. The annual reports of the Louisville & Nashville Railroad.

Q. Those are in the vice-president's office?—A. Yes, sir.

Q. Isn't that report that you have been examining a report for a fiscal year, and simply a financial statement which shows what was paid out on account of engines during that year?—A. No, sir.

Q. Can't you get that report for us?—A. I have no authority
7757 to produce a report.

Mr. MORRISON. It is right here in New York, isn't it, Mr. Crawford?

Mr. CRAWFORD. It is a printed document. The Government has copies of it.

Mr. MORRISON. We haven't got it here.

Mr. CRAWFORD. We haven't the slightest objection.

Mr. MORRISON. Is it in Poor's Manual?

Mr. CRAWFORD. That I don't know. It is the annual report of the railroad, and is, undoubtedly, filed with the Interstate Commerce Commission.

Q. Will you ask the fourth vice-president if you can bring that over here this afternoon?—A. The fourth vice-president?

Q. Or is it the second vice-president?—A. The second vice-president.

Mr. CRAWFORD. We have no objection.

A. I have no objection to asking him.

By Mr. CRAWFORD:

Q. Mr. Hedgecock, have the same methods of transcribing these items from the daily train reports to the cards, which is similar to Defendants' Exhibit 75, been followed since the keeping of the cards was begun in 1903?—A. Yes, sir; the same methods.

Q. The statistics for 1906–7, which you have put in here, are made up from the same kind of cards as those from which the statistics for 1904–5 were made up?—A. Exactly the same, and in the same manner.

Q. Wherever the word "brasses" occurred in one case you interpreted it in the same way as you did in the other case, did
7758 you?—A. Exactly the same.

Mr. MORRISON. That is slightly leading.

By Mr. MORRISON:

Q. Have you here any of the cards for the year 1904–5?—A. I think that is 1904.

Q. Have you any of the cards here except for August, 1904?—A. I have not; no, sir.

Q. Then, you haven't any for the period 1906–7?—A. I have none here; no, sir.

Q. You mean here in the court room. Have you any in New York?—A. No, sir.

Q. Are there any kept in any of the offices here?—A. No, sir; not to my knowledge.

7759 JOHN F. DEEMS, being duly sworn as a witness on behalf of the defendants, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is your full name?—A. John F. Deems.

Q. And your occupation?—A. General superintendent of motive power of the New York Central & Hudson River Railroad.

Q. As general superintendent of motive power, what are your duties?—A. I have general supervision of the motor power and rolling stock, power, shops, etc.

Q. On what lines of roads?—A. The New York Central.

Q. What does that include?—A. I have charge of the New York Central and the allied lines, the Lake Shore, Michigan Central, the Big Four, Pittsburg & Lake Erie, the Rutland, the Boston & Albany, known as the New York Central Lines.

Q. All of those roads whose names you have just mentionad are operated under the general title of the New York Lines, are they not?—A. The New York Central Lines.

Q. And it is of those lines that you are superintendent of motive power?—A. Yes.

Q. So that you come in contact, as superintendent of motive power, with the motive operation of those individual roads that you have just mentioned?—A. Yes, sir.

Q. Have you caused to be prepared certain statistical tables
7760 that you have turned over to us?—A. Yes, sir.

(Papers marked Defendants' Exhibits 77, 78, and 79, respectively.)

Q. I show you defendants' Exhibit 77. Will you please state what that is?—A. Figures prepared showing the performance of locomotives in the matter of lubrication for the year ending September 30, 1898, and the year ending December 31, 1907.

Q. Under the head of the first column, the year ending September 30, 1898, you have a statement: "Total number of locomotives in service" as being 853. Then you compare that, as I understand it, with the total number of locomotives in service for the year ending December 31, 1907.—A. Yes, sir.

Q. Making the total number for the year 1907, 1,886?—A. Yes, sir.

Q. The increase upon a percentage basis being 121 per cent?—A. Yes, sir.

Q. And then you compare, just below that, the weight of those same locomotives for those corresponding periods?—A. Yes, sir.

Q. And then, in the line next below that, you have the average weight of those same locomotives for that corresponding period?—A. Yes, sir.

Q. And then you show that the percentage of increase in the average weight of locomotives, comparing those two periods, was 54.9 per cent?—A. Yes, sir.

Q. What do you mean by "Locomotive mileage, all services," which appears in the next column?—A. That is the total
7761 mileage made in the year.

Q. That is to say, you show there, for the year ending September 30, 1898, the total number of locomotive miles covered by the 853 engines that were then in service?—A. Yes, sir.

Q. And that is represented as being 32,949,479 miles?—A. Yes, sir.

Q. And for the corresponding period ending December 31, 1907, the 1,886 locomotives made 60,500,808 miles?—A. Yes, sir.

Q. Or an increase in the number of miles of 84 per cent?—A. Yes, sir.

Q. Now, you go right along there and you prepare your table with respect to freight cars on precisely the same theory, using the same scheme that you used in connection with locomotives?—A. Yes, sir.

Q. And that shows an increase in the total number of commercial freight cars, comparing the two fiscal years of 1898 and 1907, of 75 per cent, does it not?—A. Yes, sir.

Q. And of freight cars in the company's service, 37 per cent?—A. Yes, sir.

Q. And an increase in the total tons capacity of commercial freight cars of 139 per cent?—A. Yes, sir.

Q. And an increase in the average tons commercial car capacity of 37 per cent; is that right?—A. Yes, sir.

Q. Will you explain what those figures mean opposite the heading. "Maximum light weight freight cars?"—A. The light weight freight cars in 1898, the maximum, were 30-ton cars, weight of
7762 the cars 33,100 lbs.; and in 1907 the maximum was 50-ton, the maximum capacity would be 50-ton cars, the weight of the cars being 38,900 lbs.

Q. That is, the maximum capacity in 1898 was 30 tons?—A. Yes.

Q. And the car weighed 33,100 lbs.?—A. Yes.

Q. And in 1907 it was 50 tons, and the car weighed 38,900 lbs.?—A. Yes, sir.

Q. Or an increase of 17 per cent?—A. Yes, sir.

Q. Then you take the minimum light-weight freight cars and treat them in just the same way?—A. Yes, sir.

Q. And then you give us the total freight ton mileage?—A. Yes, sir.

Q. Of those corresponding periods?—A. Yes.

Q. Showing an increase of the freight ton mileage of 70 per cent; is that correct?—A. Yes, sir.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 77.

Mr. MORRISON. That is objected to as incompetent and immaterial.

Q. Will you please explain the statement marked Defendants' Exhibit 78? What is that?—A. Statement showing cost of lubrication of locomotives.

Q. Comparing the two fiscal years of 1898 and 1907?—A. Yes, sir.

Q. Now, the 853 locomotives that you had in operation in 1898 cost how much?—A. $2.353 per 1,000 miles.

Q. The cost of lubrication per ton weight, however, was how much for 1898?—A. $1.00.

7763 Q. And the cost of lubrication per 1,000 miles in 1898 was how much?—A. $2.353 per 1,000 miles.

Q. Now, the cost of lubrication per ton weight decreased from $1.09 in 1898 to .62 in 1907, did it not?—A. Yes, sir.

Q. And notwithstanding the increased weight of the locomotives the cost of lubrication per 1,000 miles had increased only from $2.353 to $2.50?—A. Yes.

Q. According to Exhibit 77, the percentage of increase in the average weight of locomotives, comparing these two periods, 1898 and 1907, was 54.9 per cent, was it not?—A. Yes, sir.

Q. Now, although the percentage of increase in the average weight was 54.9 per cent, what was the percentage of increase in the cost of lubrication per 1,000 locomotive miles, comparing those same periods, as shown in defendants' Exhibit 78?—A. 6.2 per cent.

Q. On Exhibit 78 you show, do you not, the cost per ton weight of locomotives for the year ending September 30, 1898?—A. Yes.

Q. And you compare that with the cost per ton weight of locomotives for the year ending December 31, 1907, do you not?—A. Yes, sir.

Q. And what was the decrease in percentage?—A. 43 per cent.

Q. What was the cost of lubrication per thousand passenger car miles for the year ending 1899 as compared with the cost of lubrication per 1,000 passenger car miles for the year ending 1907?—A. It was as 40 against 15, or a decrease of 62 per cent.

7764 Q. What was the decrease in the cost per 1,000 freight-car miles for lubrication, comparing those two periods, notwithstanding the increase in the weight of freight cars?—A. It was as 62 compared with 58, or 6 per cent; that would be 6 per cent decrease.

Q. Those figures concerning which I last interrogated you about appear upon defendants' Exhibit 78, do they not?—A. Yes, sir.

Mr. ROSENTHAL. I offer defendants' Exhibit 78 in evidence.

Mr. MORRISON. It is objected to as incompetent and immaterial.

Q. What is defendants' Exhibit 79?—A. It indicates the size of journals as between the years 1898 and 1907.

Q. That is, you compare the size of the journals on passenger and freight cars for those two periods?—A. Yes.

Q. And the number of cars of each size of journals?—A. Yes.

Q. Generally speaking, that shows what, so far as the size of journals is concerned?—A. It shows the surfaces to be lubricated.

Q. Does it show an increase in the size of journals?—A. Yes, sir.

Q. A marked increase, does it not?—A. Yes, sir; a marked increase.

Q. An increase in the size of journals means an increase in the surface that is to be lubricated?—A. Yes, sir.

Mr. ROSENTHAL. I offer defendants' Exhibit 79 in evidence.

7765 Mr. MORRISON. Objected to as incompetent and immaterial.

Cross-examination by Mr. MORRISON:

Q. Do your records show the increased weight of tenders, separate and distinct from the engine?—A. No, sir.

Q. Then, you couldn't furnish us a statement that would show how much the tenders have increased in weight?—A. No, sir. I beg your pardon, we could possibly prepare it, but I couldn't give it now.

Q. But you have the records from which such a table could be prepared?—A. I think it could be.

Q. You have a record of the different styles or types of engines, haven't you, in use on your road?—A. Yes, sir.

Q. And the weight of the engine?—A. Yes, sir.

Q. And the weight divided between engine trucks and engine driving axles?—A. Yes, sir.

Q. And the weight of the tenders?—A. Yes, sir.

Q. And the weight of the trucks on the tender?—A. Yes, sir.

Q. Mr. Deems, can't you furnish us a statement similar to what I show you here on the blueprint? We think that it is quite material, to get at the real situation, to have those weights of the different parts.—A. I have very little doubt that we can furnish them. I think there is no doubt that we can.

Q. If we furnish you a form, will you make up a statement on that form that will show the information such as is indicated on the
7766 blueprint I just showed you?—A. I will if we have it, and I have no doubt we have.

Mr. MORRISON. If that statement is made up and sent to us, we will probably not need to recall you, but will just use the statement if it is in the form indicated there.

Q. I call your attention now to defendants' Exhibit 77, and we have here, in the second clause, "Total weight of locomotives in service (in pounds) 142,222,520." Does that include the weight of the tender?—A. Yes, sir.

Q. What do you mean by "Total number of freight cars commercial" and "Company's service?"—A. The "Company's service" are work cars that are engaged in construction work and various other lines of work.

Mr. ROSENTHAL. All of those freight cars are lubricated by the Galena Company under their contract?

WITNESS. Yes, sir.

Q. Can you also make up from your records, Mr. Deems, a statement showing the total light weight of cars in service during the two periods; that is, 1898 and 1907? That does not appear.—A. No; it doesn't. The total does not appear. I don't know whether we could make that accurately or not; I can't answer. I imagine it will be quite difficult.

Q. If you can you will do so, will you?—A. Yes, sir.

Q. Mr. Deems, are you satisfied that an agent of the Government may examine the original records from which these exhibits—77, 78, and 79—are made?—A. Why, so far as I am concerned, I am satisfied they may.

Q. You don't imagine there will be any objection to it, do you?—A. I don't think there would.

7767 Q. How long have you held the position which you now hold?—A. Since January, 1903.

Q. You have been in the railroad business, however, I take it, for a much longer period of time?—A. Yes, sir.

Q. And been connected with the operating department?—A. Yes, sir; the mechanical department.

Q. There have been great improvements made, have there not, in all railway appliances?—A. Yes, sir.

Q. From 1898 to 1907?—A. Yes, sir.

Q. All expenses have been greatly reduced, have they not? That is, the cost of carrying a ton of freight a mile has been reduced materially since 1898?—A. I can't answer that, because I don't know about that.

Q. That is out of your line of duty?—A. Yes, sir.

Q. So that you wouldn't know?—A. No.

Q. Well, you know there has been a great improvement in the machinery, do you not?—A. Yes, sir.

Q. There has been an improvement in the brasses that are used, has there not?—A. Well, I couldn't say yes or no to that positively.

Q. Don't you know that there has been constant effort made, and with considerable success, to secure a better quality of brasses for use on railroads throughout the country generally during the last ten years?—A. There has been an effort made to do it, I think.

Q. And haven't there been improvements made in the boxes of locomotives, and in freight and passenger cars?—A. The driv-
7768 ing boxes—or journal boxes I would call them—of both locomotive and freight cars are much the same in design as they were. They have increased in size very much.

Q. Of course it costs more to lubricate a large car with larger journals than it does a small car that hauls a lighter load.—A. Yes, sir.

Q. But does the cost increase in the same ratio in proportion that the weight of the car, when loaded, increases?—A. Theoretically, I would say it did.

Q. Well, practically, would you think so?—A. Yes, I would think that; that would be my personal opinion that it should.

Q. Suppose now that you had one car that would carry 50,000 pounds and you had two cars each of which would carry 25,000 pounds with the same number of journals but smaller, of course, on the smaller cars; do you think it would take as much to lubricate the one car carrying the 50,000 pounds weight as it would the two cars which together carried the same weight?

Mr. ROSENTHAL. How about the weight of the car?

A. I don't think I got your question.

(The question was read.)

Mr. ROSENTHAL. Do you include there the weight of the cars, Mr. Morrison?

Mr. MORRISON. The weight of the cars is not included in the question. If it properly should be, I will add to it this: that I mean the total weight on the trucks, excluding the trucks themselves.

A. Yes. The same number of journals under the two cars
7769 that there would be under the one car, do I understand that?

Q. No; there would be twice as many journals.—A. The question says the same number of journals, I think.

Q. No; the same number of journals per car.—A. Well, I didn't catch that last. I thought the same number of journals under the two cars.

Q. No; there would necessarily be twice as many journals under the small cars. Now, assuming the elements I have just suggested, what would your answer be to that question?—A. There would possibly be some advantage in the larger car.

Q. Would it not, in your opinion, cost less to lubricate that one larger car, the weight and everything being the same——A. Yes, I understand.

Q. ——than it would two smaller cars?—A. I think it would.

Q. Is this not true, Mr. Deems, that the size of the journal boxes, say, on the large car, are not as large in proportion to the weight of a car as they are on a smaller car?—A. I couldn't answer that offhand without confirming it.

Q. Now, in every journal box there is a certain amount of lubricant that goes to waste; that is true, necessarily, isn't it?—A. Yes.

Q. And if there are twice as many journal boxes necessary in cars to carry the same load, there will be more waste than there would in half that number; that follows?—A. Yes, sir.

Q. Isn't it true that the greater part of the oil put into the box is actually wasted instead of actually doing service on the jour-
7770 nal?—A. I don't know. I would not be inclined to think that was true.

Q. Well, don't you think this is true: that in all kinds of lubrication only a small percentage of the oil actually gets to the journal and does the work, and that the rest is evaporated and wasted and used up and does not actually do service upon the journals?—A. Well, there is a considerable per cent of wastage.

Q. And that is necessarily so, is it not?—A. Yes, sir.

Q. And can not be avoided?—A. No, sir.

Q. Do you know whether any efforts have been made or any appliances invented or put into use to save the lubricant during the period covered by these exhibits?—A. Innumerable appliances have been brought out, tested, and mostly rejected as impracticable.

Q. I assume that there has been, however, a considerable improvement along those lines?—A. There is an improvement in the method of packing the boxes, but they are still packed with waste as they were in 1898.

Q. Isn't more attention given now to details of that kind than there used to be?—A. Yes, sir.

Q. And aren't the train men instructed and cautioned to be more careful about the use of lubricants, as well as of other materials—more than they used to be?—A. Yes, sir.

Q. What is the advantage of having large freight cars rather than the smaller type? I notice from the exhibit here and from all the

testimony in this case that the tendency is to put in use larger freight cars and larger engines.—A. Yes, sir.

7771 Q. Why is that done?—A. Oh, there are many things that lead up to that, some of which I couldn't answer. Traffic conditions. As a general, broad proposition, it means to reduce the number of cars in the train and correspondingly reduce the number of trains handled and increase, if possible, the revenue-earning power of the train.

Q. It is less expensive, isn't it, to haul in large loads, as a general proposition, than it is in small loads?—A. I should say so.

Q. And that is the great reason, I assume, that all the railroads in the country have of late years been increasing the size of their cars and locomotives?—A. Yes, sir.

Q. The cost of lubricating the tender of an engine is very small, is it not, as compared to the lubricating of the rest of the engine?—A. Yes, sir.

Q. Do you know what the per cent is?—A. No, sir.

Q. Calling your attention to defendants' Exhibit 78, you have here, in the first column, under the year ending September 30, 1898, for instance, "Total cost of lubrication for locomotives, oil and grease only, $77,540.30." Is that the invoice price, or is that what you actually paid?—A. I can't answer for that figure in 1898.

Q. Following right down: "Cost of lubrication per ton weight, locomotive mileage, $32,949.479."—A. No; 1.09, cost of lubrication per ton weight.

Q. Yes. What does that mean?—A. That, of course, would be based on this figure, but whether that is the invoice figure

7772 or the actual cost I couldn't answer for 1898.

Q. And that is the same, also, with the $2,353.00?—A. Yes, sir; I couldn't answer as to that.

Q. Will you furnish us a statement showing the amount of oil used in the year 1907, and what was paid for it? That would be on locomotives for the calendar year, and cars for the fiscal year 1907.—A. I will.

Q. It is necessary for us to have that in order to figure up what these figures mean.—A. Will you make a memorandum of what you want so I will be sure to get it, for I fear I would not remember.

Q. Yes. What are these statements made up from? I mean now Exhibits, 77, 78, and 79.—A. They are made up from the reports gotten out in the auditor's office, and I think some of them are from reports in my office.

Q. Were they made up under your direction?—A. Yes, sir; I directed the clerk to have them made up.

Q. I notice on Exhibit 78 that you have used the calendar year for locomotives and the fiscal year for cars. Why was that done?—A. I can't answer.

Q. Was that done under your direction?—A. That part specifically was not done under my direction, to have it made in that way.

Q. You gave some general directions, I assume, to somebody, about how it was to be made up?—A. Yes, sir.

Q. And left the details to the person making up the statement?—A. Yes, sir.

7773 Q. It appears that two different years are here in Exhibit 78; that is, one is a fiscal year and the other is the calendar year.

Mr. ROSENTHAL. Has the fiscal year been changed?

WITNESS. Yes; it has.

Q. I understand you now that the fiscal year begins with December 31st?—A. It begins with January 1st and ends with December 31st.

Q. How long has that been the fiscal year?—A. I think about three years.

Q. Then, if your fiscal year is the same as the calendar year, that clears up the question?—A. Yes; it is now.

Q. Do you know what the fiscal year was in 1899?—A. No, sir.

Q. You don't know whether it ended September 30, 1898, or not?—A. No; I do not.

Q. I notice in this Exhibit 78 that your statement is: "Year ending September 30, 1898."—A. Yes.

Q. Was that, as you understand it, the ending of the fiscal year at that time?—A. I assume it was.

Q. In reference to cars, the statement says, "Fiscal year 1899."—A. Yes.

Q. It doesn't state when it ends?—A. No.

Q. You don't know?—A. No.

Q. I assume that you didn't do any of this work personally and that you didn't go over the books, and really know nothing about that?—A. I did not.

7774 (An adjournment was here taken until the morning of Monday, June 29, 1908, at 10.30 o'clock.

7775 ROOM 722, CUSTOM-HOUSE, NEW YORK CITY,
Monday, June 29, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison, and Mr. J. Harwood Graves; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. F. L. Crawford, and Mr. W. Cleveland Runyon.

THEODORE H. CURTIS, recalled and his cross-examination resumed, as follows:

By Mr. KELLOGG:

Q. I show you a copy of a letter (petitioner's Exhibit 852), which purports to have been written by you to Mr. Evans, the general manager of the Louisville & Nashville Railroad, and ask you if you wrote the letter of which that is a copy?—A. That letter was written in our department. I did not write the letter. I think I signed it.

Q. You knew the contents of it before you signed it?—A. Practically.

Q. Are the statements in there correct?—A. I don't recall just now how the matter stands.

Mr. KELLOGG. I offer petitioner's Exhibit 852 in evidence.

Mr. ROSENTHAL. I object to it, upon the ground that it is inter alios and immaterial.

7776 Q. I notice in this letter you say: "Our recommendation with regard to Perfection packing is that the guaranty feature of the contract for the year 1902 be eliminated and that the railroad company pay the Franklin Manufacturing Company the market value of material of the same quality for all packing furnished since July 1, 1902. Our opinion is that the railroad company could have purchased packing of equal quality at 9 cents per pound." Did you write that letter?—A. That is in that letter.

Q. Which you signed?—A. I think I signed it.

Q. Now, you did know that the railroad company was buying packing of the Franklin Manufacturing Company, didn't you?—A. I understood so.

Q. You were mistaken, then, when you testified on Thursday that you didn't know it and never heard of it, weren't you?

Mr. ROSENTHAL. I don't think that question was asked him.

Q. Well, let me refresh your recollection. "Q. You buy your waste of the Franklin Manufacturing Company, don't you?—A. I don't know. Q. Did you ever know whether you bought it of that company or not?—A. No. Q. You never had any information?—A. No, sir. Q. Do you know now whether you ever bought any waste of the Franklin Manufacturing Company, Franklin, Pennsylvania?—A. No." Now, which is correct?—A. Personally, I don't know.

Q. Well, you made a statement in this letter——A. I said I did not write that letter.

Q. You signed it?—A. I know I signed it.

7777 Q. You ought to know what is going on in your department.—A. Not always.

Q. You state in this letter also that there is a claim by the Franklin Manufacturing Company—on the first page. That claim is one of the subjects about which you were writing in this letter, isn't it?—A. Yes.

Q. Then, you must have known that you were buying waste from the Franklin Manufacturing Company?

Mr. ROSENTHAL. When?

Mr. KELLOGG. At some time.

Q. Weren't you?—A. Not directly.

Q. What do you mean by "not directly?"—A. I did not personally know that they were buying waste of the Franklin Manufacturing Company.

Q. You were informed of it, weren't you?—A. Yes.

Q. You were writing about a contract for the purchase of waste for that company, weren't you?—A. Yes.

Q. And you were giving your opinion as to that purchase price?—A. The opinion expressed in that letter.

Q. Now, is it a fact that you believed you could buy equally good packing at 9 cents per pound, as you state there?—A. At that time I thought so.

Q. You were paying them 12?—A. I don't know.

Q. You don't know what you were paying them?—A. No.

Mr. ROSENTHAL. What is the date of that letter?

Mr. KELLOGG. November 28, 1903.

7778 Q. Well, that was your opinion, that you could buy it for 9 cents, was it?—A. It is the opinion expressed in that letter.

Q. Well, was it your opinion or were you stating——A. I signed the letter as a whole.

Q. This was a recommendation to the general manager, wasn't it?—A. Yes.

Q. You don't mean that you signed a letter without knowing the contents of it?—A. Sometimes we do.

Q. Did you this one, or did you not?—A. I didn't know that one, no.

Q. You didn't know anything about it?—A. Not directly.

Q. Then you were making a recommendation to your general manager about the price of packing and about a claim that the Galena-Signal Oil Company made to you without any personal knowledge of it, were you?—A. Without any direct personal knowledge.

Q. Are you apt to make such recommendations to the general manager without any knowledge?

Mr. ROSENTHAL. I object to that upon the ground that it is wholly immaterial. The witness has answered that he made this recommendation without having any direct personal knowledge, and it already appears that he just came into that position about the time that that letter was written.

Mr. KELLOGG. It doesn't appear anything of the kind. He came in several months before.

Mr. ROSENTHAL. Very well; substantially the time.

7779 Q. Now, here is a careful computation to show that the claims of the Galena-Signal Oil Company are justified—sent to your vice-president. Did you know anything about the subject or did you not?

Mr. ROSENTHAL. I object to that upon the ground that it is entirely immaterial whether he did or didn't. The question is whether he signed that letter.

Q. Answer the question, please.—A. I think I signed the letter.

Q. I have not asked you that question. Answer my question, not Mr. Rosenthal's.

(The question was read.)

A. I knew something of it in a general way.

Q. You believed the statements in this letter to be true, didn't you?—A. I did.

Q. Do you still believe them to be true?—A. They are as stated there.

Q. You also stated in this letter "they (referring to the Galena-Signal Oil Company) received full invoice value, which is high and fictitious, for oil furnished for car equipment, and we therefore think the car question, to which they lay so much stress, should be eliminated." Was that true?

Mr. ROSENTHAL. Was which true? The invoice price or——

Mr. KELLOGG. "High and fictitious."

Mr. ROSENTHAL. That has been in this case for months.

Mr. KELLOGG. If you will please make your objections and not comment for the benefit of the witness.

7780 Q. Will you answer the question, please?

Mr. ROSENTHAL. I object, upon the ground that it is utterly immaterial. I also object to the unlawyerlike method of cross-examining a witness from a pretended copy of a letter, without producing the original.

Mr. KELLOGG. You know the original is in the hands of the Louisville & Nashville road.

Mr. ROSENTHAL. I don't know how you gentlemen could get a copy, except you got it surreptitiously.

Mr. KELLOGG. We got it under a subpœna—I will tell you how we got it. And you know we got it that way.

Mr. ROSENTHAL. No; I don't know anything of the kind.

Q. Was the price of this oil high and fictitious?—A. At the present time I will say no.

Q. Was it high and fictitious at that time?—A. It was our opinion at that time.

Q. You were paying full invoice price at that time, weren't you, practically?—A. I don't know.

Q. I mean you had been paying the Galena-Signal Oil Company full invoice price?—A. I don't know what we were paying them.

Q. You have changed your mind as to that, have you?—A. Yes, sir.

Q. You think the full invoice price is cheap enough?—A. Yes.

Q. Do you know anything about the market value of these oils?—A. I do not.

7781 Q. Do you know anything about the cost of them?—A. I do not.

Q. Do you know whether they could be sold for half the price that they are sold at, or not?—A. No.

Q. But still you think the full invoice price is cheap enough?—A. Judging by results.

Q. You never made any investigation to know whether oils could be bought cheaper than that?—A. I did not.

Q. Or any investigation whether any other company would furnish you cheaper lubrication or not?—A. No, sir.

Q. Never received any bids from any other company except the New York Lubricating Company?

Mr. ROSENTHAL. And that was quite enough.

Q. Did you?—A. It is not in my authority to receive bids.

Q. Still, you give it as your opinion now that that is cheap enough—full invoice price?

Mr. ROSENTHAL. Well, I object. He has answered it several times.

Q. Do you know whether that is the same price that they received thirty years ago?—A. No; I don't know.

Q. You don't know anything about it?—A. Don't know anything about it.

Q. Now, as a matter of fact, when you wrote the letter to President Smith February 7, recommending the oil and service of the New York Lubricating Company, from which President Smith quoted in the letter I showed you on Thursday, didn't you know that the contract had already been let for the next five years to the Galena-Signal Oil Company?—A. I did not.

7782 Q. Did you receive a letter of which that is a copy [handing paper to witness] from Mr. Evans, the vice-president, in January previous, notifying you that the contract had already been let to the Galena-Signal Oil Company?—A. These letters come to our office and are filed. Many times I do not know what is in them.

Q. Did you receive a letter of which that is a copy?—A. I don't recall.

Q. You don't recall it?—A. No.

Q. Now, a communication to you that the contract for lubricating the entire Louisville & Nashville system for a period of five years is something of an important communication, isn't it?—A. Trivial.

Q. Very trivial?—A. To our department.

Q. Then the lubrication of your railroad is a matter that is very trivial, is it?

Mr. ROSENTHAL. Oh, he said it was trivial to his department.

Q. You have charge of the lubrication, haven't you?—A. Yes.

Q. And yet, notifying you that the contract had been let for five years to the Galena-Signal Oil Company——A. Our department does the best with what they have.

Q. You consider that very trivial, do you?—A. Yes.

Q. Did you receive that letter? That is the question.—A. I don't recall receiving it.

The paper was marked "Petitioner's Exhibit 853."

Mr. KELLOGG. I offer in evidence petitioner's Exhibit 853 as part of the cross-examination.

Mr. ROSENTHAL. I object to it upon the ground that it only
7783 purports to be a copy of a letter. The witness has testified that he hasn't any recollection of ever having received an original of which that purports to be a copy. It is not admissible under any of the known rules of evidence.

Q. Mr. Curtis, will you produce the original of that letter, dated January 30, 1905, written by Mr. Evans, the vice-president of the road, to yourself and to the purchasing agent?

Mr. ROSENTHAL. I object to that question upon the ground that it assumes that there is an original of which this purports to be a copy, and thus far there isn't any proof in this record that there ever was an original in existence.

Q. Will you answer the question, please?—A. I have no authority to produce it if we have it.

Q. You decline, do you?

WITNESS. I have no authority to.

Q. The original, if such a letter was sent, would be in your files, wouldn't it?—A. I think so.

Q. In your office?—A. I think so.

Q. Now, this letter states, among other things, "I enclose for your information and file copy of contract, dated January 18, 1905, between the Galena-Signal Oil Company and this company for our supply of lubricating and signal oils for a period of five years, commencing March 1, 1905. I also attach copy of correspondence with President Miller of the Galena company, embracing certain modifications of the contract. Please acknowledge receipt. Yours, truly, G. E. Evans, fourth vice-president." With the exception of the direction
7784 and the heading, that is the letter. Now, do you recollect writing him any letter acknowledging receipt?

Mr. ROSENTHAL. I object to that upon the ground that it is an attempt to wrongfully get in by indirection what the examiner can't get in directly.

A. I do not.

Q. Then, you have no recollection that you knew the contract had been let when you wrote the letter of February 7 to President Smith?—A. I do not recall it.

Q. Now, coming to this statement, defendants' Exhibit 73, about the amount of waste used: You say the Galena-Signal Oil experts took charge of the lubrication during the last four months or three months shown on defendants' Exhibit 73, while the oils of the New York Lubricating Company were being used [handing paper to witness].—A. I think so.

Q. Now, the new contract which you had with the Galena-Signal Oil Company, taking effect March 1, did not provide for extra payment to that company for initial lubrication and waste in new cars, did it?—A. I don't recall.

Q. Didn't you state the other day that you deducted that from the statement here of the New York Lubricating Company, but it was not deducted from the other because the contract didn't provide for it?—A. I read it off of that piece of paper there, I believe.

Q. Then you don't know anything about it?—A. State the question.

Q. I ask you if during the four months, March, April, May,
7785 and June, shown on the statement defendants' Exhibit 73, any part of the cost of waste was deducted on account of new cars—on account of the initial lubrication and furnishing of waste for new cars.

Mr. ROSENTHAL. It was Mr. Hedgecock who testified to that deduction of $2,603.70.

Mr. KELLOGG. This gentleman also testified to it. Whether he knew anything about it or not, I don't know.

WITNESS. I don't know anything about it.

Q. Well, that deduction—then, you don't know whether those figures are correct or not?—A. No.

Q. I notice there is a large increase in the cost of waste during those four months when the New York Lubricating oils were being furnished and the experts of the Galena-Signal were handling the road.

Mr. ROSENTHAL. Show him the statement.

Q. Don't you notice that? Take the locomotives, for instance.—A. (After looking at paper.) I think so.

Q. Now, do you remember that as to those 2,050 new freight cars that were put in service during the time the New York Lubricating Company were lubricating the road, as shown on Defendants' Exhibit 73, the brasses were defective and you had to take them out—all of them, practically?—A. They were not.

Q. Where did you get the brasses that you used in those cars?—A. We manufactured them.

Q. The Louisville & Nashville Company manufactured them?—A. Yes.

7786 Q. From designs of their own, didn't they?—A. Yes.

Q. Isn't it a fact that nearly all of those brasses in those cars were taken out and discarded because they were defective?—A. No.

Q. That is not the fact?—A. Not the fact.

Q. They were retained, were they?—A. Except those that were hot——

Q. You didn't discard any of them except those that got hot?—A. I don't know to that effect.

Q. You don't know anything about it?—A. Yes, I do.

Q. You know that they didn't discard them, do you?

Mr. ROSENTHAL. Oh, well, I submit that that is not fair treatment of the witness. You put that broad question to him, as to whether they discarded any of them for any other reasons than hot boxes, and he said, "no," he didn't know that.

Q. Are you using those brasses now, made under those designs?

Mr. ROSENTHAL. Under the 1905 designs?

Mr. KELLOGG. '4 and '5.

A. I will have to say I don't know.

Q. Those brasses were designed before you went there, were they not, that were put in those 2,050 cars?—A. Yes.

Q. Isn't it a fact that you discarded them because you didn't think they were good brasses?—A. No.

Q. What brasses are you now using—the master car builders' design?—A. To a large extent.

Q. Aren't you almost exclusively using those?—A. No.

Q. You are still using the same design that you originally
7787 put in those 2,050 cars, are you?—A. Yes.

Q. To the same extent that you were then?—A. I think not. I will withdraw that. I don't know.

Q. Now, didn't you object to the design made by the Louisville & Nashville Company that was used in these 2,050 cars?—A. I don't know that I did.

Q. Did you make any objection to the design at all in use during the New York Lubricating Company's contract?—A. I don't know.

Q. Isn't it a fact that you objected to the design of the brasses designed and made by the Louisville & Nashville Railroad and put in these 2,050 cars and had them thrown out and substituted the master car builders' design, and that you are using those now?

Mr. ROSENTHAL. I object upon the ground that the question is a double-header, calls for a yes or no answer, and "yes" might answer part of it and "no" might answer the other part of it, and vice versa; and upon the further ground that both phases of it have already been answered.

A. I do not know as I objected to the design of the brasses used in the 2,050 cars, and I do not know that they have been removed.

Q. Do you know that you did object to the design made by the Louisville & Nashville Railroad Company as to some cars?—A. Yes.

Q. You did?—A. Yes.

7788 Q. Then why didn't you say so?—A. Because you didn't ask me that question.

Q. Why don't you be frank about it and tell the whole fact?—A. I answered your question.

Q. Do you want to conceal any of it?—A. No, sir.

Q. Then please tell all about that, will you?—A. I only tell what is asked.

Q. Now, tell us all about those brasses that were defective and that you discarded.—A. Ask the question.

Q. Did you object to the design made by the Louisville & Nashville Railroad?—A. Of what.

Q. Brasses?—A. For what?

Q. For cars. Now, you can't conceal it by refusing to answer. Please state the whole facts, will you?—A. State that question again and I will answer that direct.

(The question was read.)

A. Not for all cars.

Q. Did you for any cars?—A. Yes.

Q. What were the brasses that you objected to?—A. The brass used on journals under some 80,000 capacity cars.

Q. Known as gondola cars?—A. Yes.

Q. A lot of those cars were put in service during the New York Lubricating contract, weren't they?—A. I don't know.

Q. Were there not a lot of them in service during that contract?—A. I am not sure, but think so.

Q. You objected to those brasses, did you?—A. Yes.

Q. Why?—A. They were not interchangeable with the brasses used for the same sized journal throughout the United States.

7789 Q. Is that the only objection you made to them?—A. It was my opinion that they were not as good a brass as the so-called master car builders' standard.

Q. Why?—A. On account of their not being interchangeable with interchange of equipment and their liability not to seat properly in the box.

Q. Their liability not to seat properly in the box would be one of the causes for their running hot, wouldn't it?—A. At times.

Q. And in your opinion they did cause a god many hot boxes, didn't they?—A. In our opinion at that time.

Q. That was your opinion?—A. At that time.

Q. So you discarded them, didn't you, and you put in the regular master car builders'?—A. We discarded some.

Q. Most of them, didn't you?—A. I don't know.

Q. Are you using any of them now?—A. Yes.

Q. Are you using many of them?—A. A great many of them.

Q. You are not making any more of those are you?—A. Yes, sir.

Q. You are manufacturing them right along, are you?—A. Yes, sir.

Q. And are using them?—A. Yes, sir.

Q. Now, you were using them to a very large extent during the two years of the New York Lubricating contract, weren't you?—A. I am not sure that we were.

Q. Did your objection have any effect on the use of them?—

7790 A. We stopped making them.

Q. Stopped making them?—A. For new cars.

Q. So that all new equipment that went in after your objection you put in the master car builders', did you?—A. No.

Q. What did you put in?—A. The same brass.

Q. I thought you said you stopped making them for new cars?—A. We did.

Q. Did you have some that you wanted to use up, do you mean?

Mr. ROSENTHAL. I suppose what the witness means is that they had these cars which he says they are still using.

Mr. KELLOGG. The Lord only knows what he means. He doesn't seem to be willing to tell.

Mr. ROSENTHAL. I think he does.

WITNESS. State that question again.

(The question was read.)

A. We did not stop using them till quite some time after I thought it was best to go to the master car builders' standard.

Q. So that you were using them practically all the time during the New York Lubricating contract, were you?—A. In some cars.

Q. In most cars?—A. I don't know.

Q. In most of the new cars?—A. I don't know that.

Q. You were using them in all of the gondola cars, weren't you—all the big 80,000-pound cars?—A. Yes, sir.

Q. And all that were put in service during Mr. Harrison's contract you were using them, weren't you?—A. I don't know.

7791 Q. Most of them you were, weren't you?—A. I don't recall.

Q. You instituted the records, did you, to keep track of hot boxes?—A. In my department.

Q. In your department. On the Louisville & Nashville road?—A. Yes.

Q. Defendants' Exhibit 74 is the one you testified to the other day, isn't it?—A. I think so.

Q. Did you institute this card system of keeping track of hot boxes?—A. Yes.

Q. I show you this particular card (marked "Petitioner's Exhibit 854"). How many hot boxes are reported there and were reported in Defendants' Exhibit 74? Please look at the detail sheets and tell us.

Mr. CRAWFORD. What date is that card?

Mr. KELLOGG. August 15, 1904.

A. There are six hot boxes on that report.

Mr. KELLOGG. I offer in evidence Petitioner's Exhibit 854 as part of the cross-examination.

Q. The one numbered 53 you call a hot box?—A. Yes.

Q. Do you know that any of those were caused by improper lubrication or bad lubricating oil?—A. No.

Q. There are a good many causes of hot boxes besides improper lubrication, aren't there?—A. I suppose there are.

Q. Well, you are a mechanic. You know, don't you? You don't have to suppose it, do you?—A. Lubrication is at the bottom of about all of them.

7792 Q. It is at the bottom of defective brasses, is it?—A. No.

Q. They cause hot boxes, don't they?—A. Yes, at times.

Q. Now, I notice that according to this report No. 53 the hot box was in the tank of engine 229, and that on that same date, or a short time before, that tank was derailed. Isn't that true?

Mr. ROSENTHAL. What do you mean by No. 53 hot box?

Mr. KELLOGG. No. 53 hot box on the card.

A. It is so reported.

Q. That would indicate that something in connection with the derailment caused it, wouldn't it?—A. Not necessarily.

Q. You don't know that it was caused by bad lubrication, do you?—A. No.

Q. Is there anything there to indicate that it was anything but something that occurred in the derailment?—A. There is not even that much information.

Q. Well, don't you think that was the cause of that hot box?—A. I never think a case of that kind.

Q. It isn't of any interest to you to know what causes hot boxes, then?—A. Yes.

Q. A bent journal might cause a box to run hot; wouldn't it?—A. Sometimes.

Q. It would be pretty apt to cause it at any time, wouldn't it?—A. Very near.

7793 Q. A derailment is very liable to spring the journal a little, isn't it?—A. I think not.

Q. You don't think the derailment would be liable to injure the box or the journal or anything at all?—A. It might.

Q. Wouldn't it be very liable to disarrange the brass—the adjustment of it?—A. It might do it.

Q. Now, what rules do you have for designating hot boxes on these cards?—A. In the reports, you mean?

Q. Yes, in these cards, in the reports.—A. When the delay is caused by a hot box it is so reported.

Q. But there is nothing on any of these cards—what I mean—or in any of the reports, to show what caused the hot box, is there?—A. I don't know.

Q. Can you point out anything on these that would indicate it?—A. Not on that card [indicating].

Q. Can you on any of them [handing a bunch of cards to witness]?—A. I don't see anything there to indicate the cause of the box being hot.

Q. You looked over the cards for August, 1904, and found nothing to indicate upon them the cause of the hot box, did you?—A. I looked over these cards you handed me.

Q. Are those the cards for August, 1904?—A. I do not see the report for the 1st of August.

Q. Well, with that exception? The first of August was put in evidence a few moments ago.—A. Let me see it.

7794 Q. Well, excepting the first of August?—A. That is what I say.

Q. You don't see anything in those to indicate anything as to the cause of a hot box, do you?—A. No.

(The card for August first was handed to the witness.)

Q. Have you looked at August first, there?—A. Yes. That is the full month.

Q. Now, in that month of August you don't see anything to indicate?—A. I don't see anything on these cards to indicate it.

Q. Isn't it your opinion, as to all your reports, that there is nothing to indicate the cause of a hot box?—A. All these card reports.

Q. Do you know of any other reports you received that indicate the cause of the hot box?—A. Probably.

Q. Where are they? Have you got them?—A. In the file.

Q. You didn't bring them here?—A. No, sir.

Q. These statements were not compiled from them?—A. No.

Q. Defendants' Exhibit 74 was based exclusively on these cards, wasn't it?—A. I think so.

Q. I notice here, in one of these cards you put in new brass in a coach, and the box ran hot the same day—same coach, same box.—A. That often happens. Not often, but it happens.

Q. That often happens, does it?—A. Well, sometimes.

Q. From a new brass?—A. From the rough journal.

Q. And a rough journal cuts the new brass, do you mean?—A. That is the theory.

Q. Now, you studied the subject of lubrication during the years that the New York Lubricating Company was lubricating
7795 your engines and cars, did you?—A. Closely inspected it.

Q. You added a good deal to your knowledge during that time?—A. Yes.

Q. And since then you have been paying a good deal of attention to it, have you?—A. Not lately.

Q. When did you cease paying any attention to it?—A. Two years ago.

Q. Since then you haven't paid any attention to it at all?—A. Very little. I want to change that to "very little direct" attention.

Q. Well, who has given attention to it?—A. The department.

Q. Your department?—A. Yes, sir.

Q. You don't know how many engines were put in use during 1904 and 1905, or how many were put in use during 1906 and 1907, do you?—A. I can't recall.

Q. Have you the records in your office to show that?—A. I think so.

Q. Will you make up that statement for us, please—freight and passenger engines separately?—A. I haven't authority to.

Q. Then you decline, do you?—A. I said I hadn't authority.

Mr. ROSENTHAL. Mr. Hedgecock has already testified to that.

Mr. KELLOGG. He testified that he got it from the annual reports.

Mr. ROSENTHAL. Yes.

Mr. KELLOGG. That doesn't show when they were put in service by any manner of means.

Mr. ROSENTHAL. It shows the year.

Mr. KELLOGG. It doesn't show the year, either. It shows when they were acquired. It is a financial statement.

Mr. ROSENTHAL. Yes, he testified when they were put in service.

7796 Q. At whose request did you come here, Mr. Curtis?—A. You mean come here to testify?

Q. As a witness; yes, sir.—A. I was advised through Mr. Hedgecock that we were wanted in New York to testify.

Q. Through whom?—A. Mr. Hedgecock.

Q. That you were wanted in New York?—A. That *we* were.

Q. Whom do mean by "we?"—A. That is, himself and the clerk, I believe.

Q. Mr. Hedgecock works under you, doesn't he?—A. Yes, sir.

Q. You didn't take his orders to come up here?—A. He received orders from authority.

Q. Do you know he did?—A. Not directly.

Q. Did you feel as though you had authority to come up here without the authority of your superior officer?—A. He told me the order.

Q. Who told you?—A. Mr. Hedgecock.

Q. Whose orders were they?—A. The management.

Q. What man?—A. I don't know.

Q. He told you he had orders for you to come up here?—A. Yes.

Q. Did he explain what officer those orders came from?—A. He did not.

Q. You took that as an order to come up here?—A. Yes, sir.

Q. Did you know what you were coming here for?

Mr. ROSENTHAL. Mr. Kellogg, that is hardly fair when you
7797 know we came here to New York to accommodate people largely other than ourselves.

Mr. KELLOGG. You didn't come here to accommodate us. I didn't ask you to come to New York. In fact, I would rather you would take this testimony down in Louisville where I can get at these men.

Mr. ROSENTHAL. That is the first time you have said so. You know that we came to New York to accommodate people other than ourselves.

Mr. KELLOGG. This witness has been so anxious to say he had no authority to give us this information I wanted to know by what authority he came here.

Mr. ROSENTHAL. I simply want to state into the record that he came here to New York, after consultation, for the accommodation of parties other than ourselves.

Mr. KELLOGG. I will state into the record that it was not for the accommodation of our side of the case.

Mr. ROSENTHAL. I will have to take issue with you on that.

Mr. KELLOGG. I never made the slightest suggestion as to where you would take the testimony. You could do just as you pleased.

Mr. ROSENTHAL. I take issue with you there.

Mr. KELLOGG. The only suggestion I did make was that you take some of it in Chicago, which you declined to do.

Q. In your direct testimony the other day you said the cost of repairing a locomotive hot box was $10 and of a car $3.—
7798 A. Not less than that.

Q. You don't mean that is the cost every time a box runs hot?—A. Not always.

Q. Then counsel on the other side took that price and added it to the total number of hot boxes here, and you said that was correct. Now, do you mean that is correct?—A. It would be not less than that amount.

Q. And that every time a box runs hot, as shown in these reports here, it costs you $10 for the locomotive and $3 for the car?—A. It will average that.

Q. It will average that to repair it?—A. Yes, sir.

Q. It doesn't make any difference whether a new brass is put in or not?—A. On the average.

Q. Now, here are two hot boxes on the same day; the pin of an engine run hot. It cost you $10, did it, for each one of those?—A. I don't know that it did. I don't know what it cost.

Q. The locomotive didn't go into the shops? It only took a few moments to fix it?—A. I don't know that.

Q. That is the report on this card.—A. The delay marked there is not the time used to repair that hot pin; that is the time lost. It may have taken a week.

Q. Do you get similar reports for freight trains, the same as Exhibit 76 for passenger service?—A. Let me see 76.

Q. Well, select this one; something like that [handing paper to witness].—A. We do not.

7799 Redirect examination by Mr. ROSENTHAL:

Q. In making up these hot-box and waste records you pursued precisely the same methods for your records covering the period of 1906 and 1907 as you did in making up your record covering the 1904 and 1905 period, did you not?—A. Yes.

Q. And you got your information in both instances from precisely the same sources?—A. Yes.

Q. There was no attempt to make up a record one way for 1906–7 and in a different way for 1904–5?—A. No.

Q. And the daily train reports and the card system were the same in 1906–7 as they were in 1904–5, the same form?—A. The same form.

Q. Now, you talked about the brasses that were under some 2,000 gondola cars. Those are all freight cars, are they not?—A. Yes.

Q. And we have not attempted to put in evidence here any hot-box record concerning freight cars, as you understand it, because there are no such records?—A. I do not know of any such records.

Q. So that does not affect any hot-box record that may have been put in evidence here?—A. Not that I know of.

Q. Because these hot-box records simply cover locomotives and passenger cars?—A. Yes.

Q. You had about 2,000 gondola cars which you say were in use during the period from 1903 to 1905. Have substantially
7800 that same number of gondola cars continued in use from 1905 to the present time?—A. I don't know how many gondola cars we had.

Q. You don't know how many you had in use at that time?—A. No.

Q. How many new cars?—A. I don't know that.

Q. There was something said about 2,000 gondola cars that were put in in 1904–5 and 1903–4, was there not?—A. Mr. Kellogg said something about gondola cars.

Q. If those cars were put in in 1903–4 and 1904–5, whatever cars were put in use then are still in use now, substantially all of them?—A. I think so.

Q. Do you know about how many freight cars there were in the entire system in 1904–5? About 36,000?—A. I wouldn't know nearer than 30,000 to 36,000. I couldn't say positively.

Q. And the gondola cars constitute a very small proportion of the total number of freight cars?—A. I don't know what percentage they constitute.

Q. You were shown a letter here, dated October 14, 1903, or a copy of a letter, purporting to have been written by you to Mr. Huston, and the cross-examiner selected this sentence from the letter: "This oil," referring to the New York Lubricating oil, "is giving entire satisfaction." That letter refers only, does it not, to New York Lubricating oil that was used in pumps, and hadn't any reference to New York Lubricating oil used for general lubricating purposes; isn't that so?

7801 Mr. KELLOGG. The same oil.

A. Used in water-station pumps only.

Mr. KELLOGG. The same oil, isn't it, that is used in other places?

Mr. ROSENTHAL. Wait a minute. I have the witness now.

Q. And a cheaper grade, a poorer grade of oil will go in such pumps than in railroad equipment, isn't that so?—A. Yes.

Q. There was a brass used under the gondola cars, which you testified on cross-examination that you objected to, or to some of which you objected. Isn't it true, Mr. Curtis, that a great many, if not the larger part of those brasses were continued in use on those cars during the period that the Galena Company was lubricating, after the Galena Company took the contract in 1905, and that only a comparatively small proportion of the total number of brasses were discarded?—A. I do not know what number continued in service, or what were discarded.

Q. Do you mean you have no knowledge upon that at all?—A. I have no figures to tell what it is.

Q. Isn't it a fact that fully four-fifths of those brasses continued in use after the Galena contract was entered into?—A. I don't know.

Q. Didn't some of them continue in use?—A. Yes.

Q. And a great many of them?—A. I think so.

Q. But just what proportion you won't undertake to say?—A. I can't tell; I don't know.

Q. And that is true covering this 1906-7 period?—A. Yes.

7802 By Mr. KELLOGG:

Q. You said that you had no hot-box statement as to freight cars, but only as to the use of waste. Hot boxes cause the use of more waste, don't they?—A. Yes.

7803 FRED A. BURGESS, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is your full name?—A. Fred A. Burgess.

Q. Where do you live?—A. I live in Louisville, Kentucky, when I am at home.

Q. What is your present occupation?—A. I am employed by the Brotherhood of Locomotive Engineers. Do you want my title?

Q. If you please?—A. My title is Assistant Grand Chief.

Q. Assistant Grand Chief of the Brotherhood of Locomotive Engineers?—A. Yes, sir.

Q. What is the Brotherhood of Locomotive Engineers, generally?—A. It is an organization composed of about 87 per cent of the locomotive engineers in the United States, Canada, and Mexico.

Mr. KELLOGG. That is objected to as entirely immaterial in this case.

Q. Were you ever a locomotive engineer yourself?—A. A locomotive engineer for 22 years.

Q. During what period of time?—A. From the year 1884 until 1906.

Q. On what road?—A. On the Louisville & Nashville Railroad.

Q. During all that period of time you were on the Louisville & Nashville?—A. Yes, sir. I never ran an engine on any other railroad. I was promoted on that road.

7804 Q. Promoted from fireman to engineer?—A. Yes, sir. I beg your pardon. I don't know whether this wants to go into the record or not, but that 22 years does not constitute the time that I was in the employ. I fired two years and a half.

Q. Before you became an engineer?—A. Yes, sir.

Q. You were an engineer on freight trains for how many years?—A. 18 years.

Q. And on passenger trains for four years?—A. I was an engineer on passenger trains four years; yes, sir.

Q. During the time you were with the L. & N. did you also occupy the position of traveling engineer?—A. Yes, sir; I was traveling locomotive engineer in 1898.

Q. Traveling engineer for what? What does that mean?—A. A traveling engineer is an official supposed to travel over the road, over a certain district of the road which he is assigned to, and sees that the other engineers run the engines in an economical and proper manner, and also to report any defects upon the locomotives, and any general recommendations are acceptable on the Louisville & Nashville road.

Q. And you were traveling engineer how long?—A. I was traveling engineer for 60 days, and resigned and went back to one of the locomotives.

Q. Were you also what is known as road foreman of engines at any time on that road?—A. "Road foreman of engines" and "traveling engineer" are practically one and the same position. In the eastern country it is known as "road foreman." On the L. & N. it was known as "traveling engineer."

7805 Q. And did you also occupy the position of general chairman of the Brotherhood of Locomotive Engineers for the L. & N. road during your period of time?—A. After resigning my position as traveling engineer and becoming a locomotive engineer, then the engineers elected me as general chairman, some time after that.

Q. Your experience, then, as a locomotive engineer has extended over a period of twenty-odd years?—A. Yes, sir.

Q. And through what territory did you run your passenger trains?—A. I ran from Louisville, Kentucky, to Nashville, Tennessee, a 187-mile run, on the passenger engine.

Q. And on the freight trains?—A. My first five years, about five years, was running in the mountains of Kentucky, in the coal-carrying districts. Then I ran between Louisville and Bowling Green, on what was known as slow freight. Then I ran for five years from Louisville to Nashville, Tennessee, on a fast freight. The balance of the time I ran on a passenger between Louisville and Nashville.

Q. The four years that you ran a passenger train were what four years?—A. The last four years I ran—I suppose it was about.

Q. 1902 to 1906, inclusive?—A. Yes, sir.

Q. When did you resign as an engineer in the year 1906?—A. I think it was in September.

Q. In September of 1906?—A. Yes.

Q. Will you discribe in particular the run from Nashville to Bowling Green and from Bowling Green to Elizabethtown?

7806 What is the distance of those runs?—A. From Nashville to Bowling Green is a distance of 73 miles, and from Bowling Green to Elizabethtown is 73 miles. There may be a fraction in there of tenths, you know.

Q. Were those points included within the territory covered by you while you were a passenger locomotive engineer?—A. Yes, sir.

Q. Was there any rule, custom, or practice with respect to the making of those two runs of 73 miles each without any stops?—A. On our train No. 4, which is a limited train from New Orleans to Cincinnati, we were expected to run from Nashville to Bowling Green without a stop, unless they had passengers at one point, called Gallatin, that went to points Louisville and north of Louisville. Between Bowling Green and Elizabethtown we made the run and were expected to run to Elizabethtown without a stop, unless we had through passengers to visit Mammoth Cave. Probably we would make those stops about once out of every ten trips. Otherwise, we were expected to make the run between those two points without a stop.

Q. Now, I will get back to those two points a little later on. Do you remember about when it was that the oils of the Galena Company were first introduced, or lubrication, on the L. & N. road?—A. I have a record only of my memory. About 1897 was when the Galena was first introduced. Possibly it might have been in 1898. Somewhere about that time.

Q. And do you remember, generally speaking, the oils that were used before the Galena oils were used?—A. Yes, sir; I have a very good recollection of that.

7807 Q. Do you remember that in 1903 some other oils than the Galena oils were used?—A. Yes, sir.

Q. For a period of two years?—A. Yes, sir; I do.

Q. Have you since learned what oils those were?—A. At that time we were informed that they were the New York oils.

Mr. KELLOGG. Please state what you know; not what you were informed.

WITNESS. I am telling you what I know, Mr. Kellogg.

Mr. KELLOGG. You said you were "informed."

Q. By whom were you informed?—A. By the representative of the New York Company, and by the officials of the company whom we came in contact with.

Mr. KELLOGG. What year was that, do you say?

Mr. ROSENTHAL. 1903 to 1905.

Q. So that your experience covers a period of time on the L. & N. road before Galena oils were used, after they were used, and also the time when the New York Lubricating Company's oils were used?—A. Yes, sir.

Q. And also when the Galena oils again came into use?—A. Yes, sir.

Q. Now, a locomotive engineer comes in direct contact with the lubrication of his locomotive, doesn't he?—A. Yes, sir. That is part of the business.

Q. And an important part, is it not?—A. Yes, sir; on a fast train it is a very important part.

7808 Q. With respect to the matter of hot boxes, while you were an engineer on the road, did you make any report to any superior official of hot boxes that you experienced?—A. Yes, sir; every time we had a hot box on the locomotive we were required to make out a detailed statement on a report known as "No. 53" to the master mechanic. On a passenger train or a fast freight train we were expected to make out a daily report when we had hot boxes on the train, as well as on the locomotive.

Q. What causes a hot box, Mr. Burgess?—A. A hot box might be caused by a thin brass, a broken brass, the packing getting dry, the packing dropping down a little away from the journal, or an overloaded car.

Q. You, of course, have come in contact with hot boxes a great many hundreds of times, have you not?—A. Yes, sir.

Q. Probably thousands of times, in your long experience?—A. Yes, sir; and helped to pack them.

Q. What causes the vast majority of hot boxes, so far as your experience goes?—A. If you have a proper lubricant, I would say the large majority of hot boxes that get hot are caused by the packing getting dry or the waste getting down from the journal.

Q. Isn't that almost always the case?—A. I should say 95 per cent; probably more than that. You could tell by looking at the box, you know, mostly, whether it is the packing.

7809 Q. The packing of a box is a necessary and essential part of the lubrication, is it not?—A. Yes, sir; if you looked at a box that was hot and you would find the waste down away from the journal, you would attribute it to that cause. If you

would find the waste nicely packed up around the journal and plenty of oil on it, and that would happen continually, from a practical man's standpoint you would say the lubricant was not good.

Q. Have you in mind any comparison, so far as the number of hot boxes is concerned, in those two runs that I called your attention to a few minutes ago, between Nashville and Bowling Green and Bowling Green and Elizabethtown?—A. Yes, sir.

Q. Comparing the period during the time the New York Lubricating oil was used, from 1903, in March, to March, 1905, say, with the period before that, when Galena oils were used, and after that when Galena oils were used, what was your personal experience with respect to the number of hot boxes?—A. My personal experience was that the New York oil would not do the work that the Galena oil did, both in reference to the number of hot boxes and also in regard to lubricating the valves and the cylinders.

Q. Take up, first, hot boxes. Were there more hot boxes during that two-year period, in 1903 to 1905, than there had been just before and than there were after the Galena Company took hold again?—A. Yes, sir; a great many more. You are speaking now of locomotive, or both?

Q. I am speaking now of both locomotives and passenger coaches.—A. That is what I am speaking about.

7810 Q. When you say there were a great many more, you mean that there were more hot boxes on the locomotives and more hot boxes on the passenger coaches?—A. Yes, sir.

Q. Beyond your mere personal work, did you come in contact with other engineers on that question?—A. Yes, sir. I was the representative of the engineers on that division for many years. If you don't understand what the representative is, I will explain it to you.

Q. I would like to have you tell us just what you mean by that.—A. The engineers' organization have what they call on each part of the territory, under the respective superintendents, a local grievance committee. One man is selected as chairman of that committee. In that capacity I represented them for many years, under that jurisdiction of territory which I described—between Louisville and Nashville.

Q. During the period that you were using Galena oils, was it a rare or a common thing for a hot box to occur in those 73-mile runs that you have spoken of?—A. Using the Galena oils?

Q. Yes, sir.—A. I would say that it was a very rare occurrence.

Q. And covering those same runs, during the time that you were using the New York oils, what was your experience in that regard?—A. My experience with the New York oil was simply this:

7811 Our engine would be perfectly cool, for instance, at Bowling Green; no indication of anything being warm. We would run probably from ten to twenty-five miles, and suddenly the driving box would begin to smoke. We would get down there and look at it, and the oil would be dripping out of the driving box. Seemed to be plenty of oil on, but still it would be warm. Now, then, we would have to make out a statement in regard to that, which would in some

instances be followed by a request for further explanation: "This box was properly packed before it left, and we would like to have some more information in regard to it." Now, with the New York oil it would break out that way quite frequently. I don't understand why, but it would.

Q. At that time about how many engineers were there on the L. & N. road?—A. We had, I should say, about ten or eleven hundred.

Q. How many of them did you come in contact with?—A. In that capacity that I have just described to you, I handled about 185. I got all their complaints. The period of general chairman, I got the complaints all over the entire system.

Q. You have told us now that you remember when the Galena oils were first put in on the L. & N. road?—A. Yes, sir.

Q. What was your experience at that time, so far as the use of Galena oils diminishing hot boxes was concerned, as compared to the situation that had existed before Galena oils were put in?—

7812 A. Before the Galena oil, we had what was called the car oil. We would oil our engines about every 20 miles. We would have hot boxes. And, of course, as they began to speed up their trains and call for longer runs without stopping, the Galena oil was introduced; and after we got used to the way of using the oil the hot boxes diminished very rapidly.

Q. And you came in contact, I suppose, in that connection with Galena experts who were traveling on the L. & N. road?—A. Yes, sir. I can name them.

Q. Now, what do you say as to the quantity of Galena oil which you used in the run from Louisville to Nashville, as compared with the quantity of New York Lubricating oil that you used covering that same run?—A. When the New York oil was introduced there was no limit placed on it for a long time. They allowed us to use whatever we wanted to. About the time that they were going to change or did change, they commenced to curtail the allowance a little, but not nearly as close as the Galena.

Q. Do you remember how much Galena oil was allowed you on the run from Louisville to Nashville? How much valve oil? Was it 5 pints?—A. It strikes me we were allowed 5 pints of valve oil and 12 pints of black, if I am not mistaken.

Q. That is right. And during most of the time that the New York Lubricating Company was lubricating you say there was no limit on the quantity of oil at all?—A. No, sir. We had our buckets full; until near the latter part.

Q. Did you also observe in connection with those two runs

7813 that you have already testified about any comparison so far as the use of coal was concerned, comparing the time when the New York Lubricating Company was lubricating and the time when the Galena Company was lubricating?—A. Yes, sir; I did.

Q. Please tell us about that.—A. On train No. 4 they expected us to make the run from Louisville to Nashville with one tender of coal. That is a 187-mile run. The schedule time was 4 hours and

53 minutes. The train was a very heavy train, composed of from 7 to 9 cars. The tender held about 300 bushels of coal. And it was a very close run to make. During the period of New York oil we would go to Louisville on that train with practically no coal in our tender.

Q. That is, by the time you got there, you mean?—A. When we got to Louisville. With the Galena oil, not in every instance, but possibly seven out of ten, we would have from 25 to 30 bushels of coal left. The reason I remember that so distinctly is that we would have to make a daily report, in the event we did stop at a place called Lebanon Junction and take coal; and an engineer's ambition—mine did, at least, and others—would drive him to avoid the possibility of making out any more statements than were absolutely necessary, consequently he would not stop to take coal unless he was quite sure he could not make it.

Q. How quickly does an engineer in running his engine feel this matter of lubrication? Is the engine sensitive in
7814 that regard?—A. Oh, yes. In regard to luburicating the valves and cylinders, that shows itself, when they get dry—it shows itself at once by the engine not doing the work, and the reverse lever jerking. In fact, the keynote to a successful engineer is one who has a well-lubricated valve and cylinder and always works dry steam.

Q. So that from the point of view of the engineer running the engine, the matter of perfect or imperfect lubrication is supremely important?—A. Yes, sir; because on keeping his engine well lubricated depends to a great extent his reputation, and a good engineer is very proud of that. I will say to you frankly I am myself. I have had considerable honor shown me, but none that I appreciate any more thoroughly than when I was able to take my train in on time, and safe.

(A recess was here taken until 2 o'clock p. m.)

By Mr. CRAWFORD:

Q. Mr. Burgess, do you recollect having occasion to report repairs as necessary to the locomotive you were running?—A. Oh, yes; an engineer would have to report the repairs every trip. A book is provided for that purpose in the roundhouse.

Q. And do you recollect whether you did report repairs in that way during the period when the New York Lubricating oils were in use?—A. Oh, yes.

Q. And also when the Galena oils were in use?—A. Yes, sir.

Q. Have you any recollection as to the proportion of the
7815 number of repairs which you reported in the period when the New York Lubricating oils were in use and as contrasted with the period when the Galena oils were in use?—A. I remember when using New York oil of reporting more valves faced, more cylinder packing renewed; more (as we term it) "blows" in the cylinder, which is caused by rough surfaces or cut cylinders, and more driving boxes hot, and more truck boxes.

Q. You say more. More than what?—A. More than when we were using Galena oils.

Q. What are the causes of the injuries which require the repairs of which you have just spoken?—A. A cylinder or a valve, or the valves faced. Now let me get that right. The valve, or the valve seat, is affected by the defective lubrication—that is, if it is not properly lubricated. You have two friction-producing surfaces rubbing together, and if not properly lubricated it will cause them to cut.

Q. Now, what about those other forms of repair?—A. The same would be true of the cylinder, as the oil is fed from the lubricator into the steam chest proper, thereby lubricating the steam, which, in turn, lubricates the cylinder. If the cylinder is dry, it will cause your packing to break or your cylinder to cut.

Q. That is due to defective lubrication, is it?—A. Yes, sir.

Q. Was there any special circumstance in regard to the lubrication of the cylinders and steam chests when you were
7816 using New York oils, which you now recall?—A. The trouble with the New York valve oil, as I found it, which is used exclusively for lubricating the steam chest and the cylinder, it would not feed properly through the lubricator.

Q. I wish you could explain what the lubricator is.—A. The lubricator is a mechanical device. One is manufactured by the Nathan Company, the other by what is known as the Detroit Company. But either is a mechanical device to automatically and regularly feed oil to the cylinder and to the steam chest. My method of adjusting this lubricator was to set it by my watch, feeding a drop to the cylinder every 10 or 12 seconds.

Q. What was your experience in that respect with the New York Lubricating oils?—A. Well, the trouble about the New York oil, as we found it, the lubricator wouldn't feed accurately. It was what might be properly called an erratic feed. It would feed all right for a few miles, then it would feed a great deal faster or perhaps a great deal slower, and in some instances would stop entirely. There was no accurate movement with that kind of oil like there was with the Galena oil.

Q. Just state what your experience was in that regard with Galena oils.—A. In the Galena oil I would adjust my lubricator in this manner: 20 minutes before the train was due to leave I would set the lubricator, as I have stated, by my watch, where it would feed a drop in 10 or 12 seconds, and I wouldn't touch it any more until I arrived at the end of my run, when I shut it off entirely.

7817 Q. That was with the Galena oil?—A. That was with the Galena oil.

Q. Now, if the lubricator is not working properly, or, at least, if the oil is not feeding properly through the lubricator, would the engineer become aware of that?—A. Oh, yes.

Q. How?—A. The first thing he will notice is that his engine is lagging; I mean by "lagging" that she is not making the time. As

an illustration, on the runs that I pulled you would have, we will say, five miles between two stations. You would have six minutes to make that. You arrive at the next station; maybe seven minutes or eight minutes you would consume, which would mean two minutes in between these two stations. That would amount, in the aggregate, to quite a large amount of time. Then your reverse lever, in addition to that, would begin to shake violently, which would indicate, of course, that your valves were dry and that you were losing time, and if you didn't correct it soon it would result in breaking, probably, some of the machinery connected from the eccentric to the valve. Such is the result sometimes in a hot eccentric. It would result other times in shearing the bolts off of the eccentric strap. It would probably cut your valve seats, which you would have to account for.

Q. From your experience as an engineer, would you say that there is any reason why the railroad management should desire to economize the quantity of oil consumed other than the mere cost of the oil? If so, what?—A. Yes, sir. I consider it very expensive
7818 to use too much oil in your cylinder, outside of the mere cost of the oil.

Q. I wish you would explain that.—A. After the steam performs its service in either end of the cylinder it goes to the atmosphere through what is known as the exhaust. In that exhaust pipe there is what they call the exhaust tip. That tip is adjusted to just as nice a degree as possible, the purpose being to get just as large an exhaust as possible without destroying the steaming qualities of the engine. Now, if you force your steam out through a very small opening you get a larger draft on your fire and your engine will make steam more freely, but you will burn more coal; and in addition to that the engine has to force—that is, the steam pushes the piston back, the other pushes it ahead, or vice versa—you have to force that steam out through a small opening, and you are suffering what is known as back pressure—that is, a certain amount of the engine is used to force the used steam out through this opening. Now, if you use too much oil, in passing out through this exhaust it clogs the exhaust, makes it smaller, and it becomes necessary to clean out the exhaust nozzle. Now, it takes time to clean that nozzle out, it takes the mechanic's time, it causes expense to do it, you hold the engine in, you lose the use of the engine; in addition to that they might not have time to do it at that period, and if you are running with an exhaust smaller than it should be you are consuming a great deal more coal.

Q. There is just one point, I think, you haven't made quite clear. How is it that an excessive use of oil makes the exhaust
7819 nozzle smaller?—A. It goes through the exhaust and it burns on the inside there a very hard scum, which it is necessary to cut off with a chisel; and on our road, and some other roads, too, they take a long rod, reamer shaped; in order to avoid the delay of taking out the exhaust they put it down through the stack and bore this out.

Q. It makes a hard deposit on the iron?—A. It makes a hard deposit on the iron; yes. I don't know what it is, but it burns on there kind of a gum.

Q. Can you state from your own observation whether there is any difference in the length of time that these two oils—that is, the New York oil and the Galena oil—would last on a bearing when they were once put on?—A. Yes; I can. That was one of the troubles with the New York oil. When the bearing got hot it seemed to get very thin and run off a hot surface. It would not cling to it.

Q. What is the fact about the Galena oil?—A. The Galena oil would not get into a watery condition as quick and would hang to a hot surface more. I frequently would make what we call an engineer's experiment. A piston is always very warm. Take my oil can and run it along that way on a hot piston [illustrating]. The piston is always hot. The Galena oil would come down around and trickle and hang to the piston, while the New York oil would run right off.

Q. Now, in making this run on the train that you spoke of, Louisville to Nashville, or the reverse, how often did you oil your engine?—
A. With the Galena oil I oiled my engine at Louisville. I ran
7820 the engine then to Bowling Green, 114 miles, and oil her there, and ran her then to Nashville, a distance of 73 miles farther.

Q. What was the fact in that regard when you were using New York oil?—A. When I used the New York oil I would oil her at Louisville; I would go 42 miles and oil her again.

Q. Where?—A. At a place called Elizabethtown, where we stopped and took water. I would run her then to Bowling Green and I would oil her there again. Then I would run her to a place called Gallatin (in my best judgment it is about 26 miles from Nashville) and oil her there again—that is, with the New York oil.

Q. How often did you make this run from Louisville to Nashv[illegible] or back, during the four years that you have testified to?—A. How often did I make the run?

Q. Yes.—A. We made 12 round trips a month; that would be 12 days down and 12 days back.

Q. That was practically running every day except Sundays, wasn't it? That is, one day one way and the other day back again?—A. Well, we didn't work every day. We just made 12 round trips a month.

Q. That is, 24 trips?—A. 24 days, yes.

Q. 24 days; 12 in one direction and 12 in the other?—A. 12 in one and 12 in the other.

Q. Something was said to one of the witnesses last Friday (I think by Mr. Morrison) in reference to the fact, or what was assumed to be the fact, that on some of these cards there were two
7821 or three hot boxes, so called, reported, applying to the same bearing, or which the language permitted to leave that interpretation. Now, what does an engineer mean by a hot box?—A. It means that a box is hot.

Q. Suppose the same box is hot twice. How, in the language of an engineer, would that be reported as two hot boxes?—A. Yes, two hot boxes, for this reason: A box gets hot. He cools it down and gives it the proper attention. Now it is in good condition. It afterwards gets hot again. That is two hot boxes. Or, in other words, it makes no difference whether three hot boxes are hot once or one box is hot three times. The results are just the same. It is three hot boxes in railroad parlance, or according to the engineer's understanding and to the officials of the company.

Q. In your experience as an engineer have you known of occasions when it was necessary to change brasses or locomotive bearings or car bearings?—A. On locomotive bearings an engineer could not change the brass on the road. I know well enough when the boxes would get hot on passenger trains, and say she was hot twice, rather than to continue to delay I would put a new box in.

Q. Perhaps I should confine my question to cars, and I do so now confine it. Have you had occasion to change it or oversee the change of brasses on cars during your experience?—A. Oh, a great many times.

Q. What, generally speaking, has that change been due to? What has made it necessary to change the brasses?—A. The box getting hot, melting the babbitt out of the brass.

7822 Q. Explain that a little bit.—A. After the box becomes hot, and to the extent that it would burn the babbitt out of the brass, you have got to put in a new brass.

Q. What do you mean by "babbitt?"—A. Babbitt is a soft metal that is put in the brass. It is very soft. I don't know what the composition of it is. Something on the order of lead. It is a composition of different metals. It accommodates itself very quickly, or, rather, finds its own seat, and, in addition to that, it produces very little friction, and they run that in to further insure coolness on the bearing.

Q. In your long experience what proportion of the changes in brasses in cars, made in the course of a run, were due to hot boxes?—A. On passenger cars?

Q. On passenger cars.—A. Probably 98 to 99½ per cent.

Q. Almost all, then?—A. Almost all. I can explain that further if you want me to.

Q. No; that will do for the present. I show you Defendants' Exhibit 75, and ask you to read it, and then I will call your attention to one or two items in it.—A. All right.

Q. I notice the third item is 10 minutes' delay at Louisville putting two brasses in postal No. 70.—A. Yes, sir.

Q. That means, I suppose, postal car No. 70?—A. Yes, sir.

Q. Now, what would you understand, as a practical engineer of long experience, from the phrase "putting two brasses in postal car?"—A. Well, reading this card, it says: "24 minutes at

7823 La Grange; same cause." Now read the three of them. Two hot boxes on postal. It is an indication that those two boxes got hot

and he lost ten minutes at Worthville packing the box. He came down to La Grange and they were hot again, and he lost 24 minutes packing them. He came to Louisville, where the car repairers had their improved facilities, and found them still hot, and so they put in two new brasses in the postal car. Reading this card as it is (and I had nothing to do with preparing it) it would imply to me as a practical engineer that this train ran from Cincinnati to Worthville, a distance of about 50 miles, and they found two hot boxes. He lost ten minutes packing——

Mr. KELLOGG. You have said that once. What is the use of going over it again?

Q. You have been over that, possibly, sufficiently.—A. All right.

Q. Now, I call your attention to another item: "5 minutes on run, brassing sleeper Spencer." What would you understand, as a practical railroad man, from that?—A. A hot box, because if that sleeper had been inspected, which it probably would—in fact, it would—and it was a thin brass, the car repairers would have found it and taken it out.

Q. What was the custom about inspecting cars?—A. Why, they inspect cars at every terminal.

Q. You mean before the train started?—A. Sure. There are men paid for that purpose.

Q. You said "inspected the cars." Would that inspection extend to the brasses?—A. Oh, yes. They raise the lids of the
7824 boxes and look at the brasses and also at the packing.

Q. And if they found any brass that appeared to be defective, what would they do?—A. Take it out and put another one in.

Q. I show you Petitioner's Exhibit 854, which is a similar card to the one I just showed you, and call your attention to the last item, reading as follows: "53 minutes account of hot box, putting brass in tank of engine No. 229," and ask you, as a practical engineer, what you would understand from that item.—A. "53 minutes account of hot box, putting brass in tank of engine 229." Well, I would consider that his box got hot.

Mr. KELLOGG. You would!

WITNESS. Don't you want me to answer this?

Mr. KELLOGG. Certainly.

WITNESS. I would consider the box got hot and they found it necessary to put brass in there, and they consumed 53 minutes doing it.

Q. I am not sure whether you stated what, in your experience, was the proportion of hot boxes which was due to trouble with the lubrication. At any rate, I will ask you that now.—A. I should say, offhanded, about 95 per cent. Now, I want to make myself clear on that. You asked me here a moment ago what proportion is due to the thin brass, and I said about a half per cent, but in my former answer this morning I mentioned different causes for hot boxes, such as the packing, for some reason or other, getting away from the journal, and a car overloaded, and a thin brass, or a broken brass.

7825 Now, I would say on this general proposition about 95 per cent would be due to defective lubrication.

Q. 5 per cent from all other causes?—A. Yes, sir.

Q. Something was said to one of the witnesses, I think in your hearing, on the question of whether a part or much of the oil used in the lubricating of bearings or railroad equipment is wasted, is lost, as I understood the question. Have you any opinion about that?—A. I have.

Q. What is your opinion?—A. Well, away back, say prior to the Galena Company coming on our road, here is the way we packed boxes. We would have a bucketful of waste and oil. We would put the waste and oil in the box, and after it got full we would try to put a little bit more in, and in that case there was considerable waste. We carried an oil can, in addition to the waste that was saturated in the bucket. The Galena Company inaugurated a system of saturating the oil in a house for that purpose, and allowed it to drip from 24 to 48 hours, and under those conditions I would say that there was very little waste, indeed. There would be some, of course, but very little waste.

Q. You mean to say that, under modern methods of lubrication, you think there is very little oil lost, do you?—A. Yes, sir.

Cross-examination by Mr. KELLOGG:

Q. Where do you live, Mr. Burgess?—A. I live in Louisville, Kentucky, 105 St. James Apartment.

Q. How long since you have been in the railroad business?—A. Well, I am in the railroad business yet.

7826 Q. In the employ of what railroad company?—A. I am not in the employ of any railroad company now. I am employed by the Brotherhood of Locomotive Engineers.

Q. Your business is connected with that office? You are not in the employ of any railroad company or working for any railroad company, are you?—A. I am not working for any railroad company. I am not really out of the employ of the L. & N. I consider that I can go back there when I want to.

Q. Are you drawing compensation from them?—A. No, sir.

Q. Then, you are not in their employ, are you?—A. Well, I am not out of it.

Q. You are not in nor out?—A. No.

Q. That is it?—A. If I would decide to go back there I could go; that is all.

Q. So you consider in that way you are neither in nor out?—A. Well, if I was out of this job I would consider that I was in.

Q. Now, at whose request did you come here to testify?—A. Whose request?

Q. Yes.—A. Mr. J. S. Coffin.

Q. Who is he?—A. Mr. J. S. Coffin is the vice-president of the Galena Oil Company.

Q. How long have you known him?—A. I met Mr. J. S. Coffin in the year 1903, in Meadville, Pennsylvania, at the funeral of A. B. Youngston, who was my predecessor in this office.

7827 Q. That is the first time you ever knew him?—A. Yes, sir.

Q. He asked you to come here and testify?—A. No; he asked me my experience with the two oils, and I told him.

Q. Then, he asked you to come and testify?—A. Yes.

Q. Had you talked with any other Galena-Signal Oil men about it?—A. I presume I have talked to some of the representatives at different times; yes. I know some of them.

Q. When you were on the Louisville & Nashville Railroad you knew some of their employees, didn't you?—A. Some of the Galena employees?

Q. Yes.—A. Yes; I knew Mr. Jim Walsh, who is now superintendent of machinery of the C. & O. Railroad.

Q. Was he at that time in their employ?—A. Of the Galena?

Q. Yes.—A. He told me he was.

Q. What was he doing for the Galena at that time?—A. He was down there as an expert.

Q. That was prior to the New York Lubricating Company's contract?—A. Yes, sir. Talked a good deal with the New York man, too.

Q. When did you first see Mr. Coffin about coming up here?—A. The last time I saw Mr. Coffin was the middle of last November.

7828 Q. Did you talk with him then about testifying in this case?—A. No; I don't believe I talked to him about testifying in this case. I talked to him about my experience with the use of the oil.

Q. Whom did you talk to about coming here to testify?—A. I don't believe I talked with anybody.

Q. Well, did you get word to come up here?—A. I got a message from him.

Q. You were not subpoenaed as a witness?—A. No; I guess not. I got a message and telegram to come to New York and I came. I was in Atlanta.

Q. Now, each engineer makes a report, doesn't he, of hot boxes or anything going wrong on his engine?—A. Yes.

Q. You don't make that for the other engineers on the line?—A. No.

Q. Each one makes his own report?—A. Yes, sir.

Q. To whom does he send it?—A. The master mechanic.

Q. Where is the master mechanic located?—A. There is one located in Louisville and there is one located in Nashville, but we don't make out the report to the one at Nashville.

Q. You made your report while you were engineer on the Louisville & Nashville, while you were running this passenger train, to the master mechanic at Louisville, did you?—A. Yes, sir.

Q. What is his name?—A. For some years it was W. P. Pike. Well, let me give it right. First it was Pulaski Leeds, then it

7829 was W. P. Pike, then it was J. G. Clifford, then it was C. F. Giles, then it was—well, I can't tell his initials, but his name is Mr. Tracy.

Q. He is now master mechanic?—A. Well, he is, in a sense; yes.

Q. What reports did you make to the master mechanic?—A. We had a report, Mr. Kellogg; it was about that long and about that wide [indicating], and we answered the different questions on there—where it occurred, between what mileposts, and several questions. Then there was a blank place down there for remarks. We put in there what caused this box, to the best of our judgment.

Q. I suppose those reports were not confined alone to hot boxes, but to anything else that occurred?—A. Oh, no; this was an accident report. You stated on the report what the delay or accident was.

Q. Anything that you observed that was wrong with the engine or that ought to be corrected you reported under "remarks," did you?—A. No, sir. Those reports were made out only in case of delay or accident. I might see something wrong about the engine that I thought ought to be corrected, but there was no delay; then I would come in and report it on the work book.

Q. Well, you reported sometime in writing anything that you saw that ought to be corrected?—A. Sure.

Q. So that if there was a hot box from any cause or a delay from any cause or anything wrong with the engine from any cause, either when you got into headquarters or to terminal or division or

7830 some time, it was your duty to report to the master mechanic?—A. Yes, sir.

Q. And you did it in writing?—A. I want to correct that. Your question is misleading.

Q. Well, go ahead and correct it.—A. When we had a delay or an accident we reported on this form 53, as I have described, and sent that to the master mechanic. When there was some work to be done on an engine we reported it on the work-book, and I don't know whether the master mechanic ever looked at that or not.

Q. What was the work-book used for? It was turned over to somebody, wasn't it?—A. The foreman in the round-house consulted that in order to know how his engines were.

Q. Now, suppose you had a series of hot boxes and you thought they came from defective oil or bad lubrication of some kind, I suppose you would report under "Remarks?"—A. Yes, sir.

Q. And did you, during these two years that the New York Lubricating Company was lubricating the Louisville & Nashville road, report that, in your opinion, the oil was not a proper oil?—A. Did I?

Q. Yes, sir.—A. I think I sometimes made myself obnoxious to the master mechanic and the foreman of the roundhouse and the representative of the New York Oil Company, telling him the oil was no good or that it wouldn't do the work.

Q. You don't know what the other engineers did, do you?—A. Yes, I do.

Q. They did it, too, did they?—A. Yes, sir.

Q. On your division, where you were, all the engineers re-
7831 ported that the oil was bad?—A. I don't say all the engineers did, but I say this, that a great majority of them did.

Q. They did?—A. Yes, sir.

Q. And those reports are in writing, are they?—A. I don't know whether they made them in writing or not.

Q. Well, you made yours in writing?—A. Yes, some of them, and verbally, too.

Q. Some of them in writing and some verbally?—A. Yes.

Q. Now, name me one that was in writing and about what you said.—A. Oh, I couldn't do that. Why, how could I remember a day and date?

Q. Oh, you needn't state the day and date, but as nearly as you can. When did their contract commence?—A. Why, I should judge—let's see—Mr. Leeds was killed in July.

Q. Well, I don't care when Mr. Leeds was killed.—A. I am trying to refresh my memory.

Q. Well, don't refresh it all over the record; just simply state.—A. I should say about March. Is there any objection to my saying that?

Q. March of what year?—A. 1903.

Q. And it ran two years?—A. About two years.

Q. Now, name that one report you made and what you said about the New York Lubricating Company oil.—A. Well, I can't tell you the day and date that a train was delayed. I can tell you about the substance of what I said, after explaining the delay,
7832 under the head of remarks, "This is only another instance of the delays caused by the New York oil, in my opinion."

Q. Now, you say the engineers, generally, on your division made the same kind of a report?—A. Yes, sir; to the best of my knowledge.

Q. Did you ever see their reports?—A. No; I never saw their reports.

Q. You are just talking from hearsay?—A. I will tell you what I am talking from.

Q. Are you talking from your own knowledge?—A. I am not talking from anything eles but my own knowledge.

Q. Then you saw the reports, did you?—A. No; I did not see the reports.

Q. Then how do you know it?—A. I know it because the engineers told me.

Q. Well, that is hearsay, isn't it?—A. No. I will explain it to you if you want to have me.

Q. Just answer my questions.

Mr. ROSENTHAL. I think he is answering them. Go ahead, Mr. Burgess, and finish your answer.

Mr. KELLOGG. No. Mr. Rosenthal is simply an attorney on the other side; he isn't running this case.

Mr. ROSENTHAL. I know, but I am running it to the extent of seeing that the witness may be permitted to finish his answer. Whenever your answer is incomplete finish it. Don't get mad.

WITNESS. I am not getting mad a bit, but I am telling the truth about the matter. You must not think because this ex-
7833 pression of my face is not the pleasantest, that I am mad. But I was in position to receive the complaints from the engineers, and I know exactly what they told me.

Q. Now, these reports which you sent in went to the master mechanic?—A. Yes, sir.

Q. At Louisville?—A. Yes, sir.

Q. That is the headquarters of the railway?—A. Yes, sir.

Q. That is where Mr. Curtis's office is?—A. Yes. Well, not in the same building.

Q. It is in the same town?—A. Sure.

Q. And Mr. Curtis has charge of the mechanical department, hasn't he?—A. Mr. Curtis is superintendent of machinery.

Q. The master mechanic is under him, isn't he?—A. Yes.

Q. Were you here the other day when Mr. Curtis testified?—A. Yes.

Q. Did you hear his testimony?—A. Yes.

Q. Did you hear him state that he wrote a letter to Mr. Smith, the president of the road, on February 7, 1905, in which he said: "I have given the subject of lubrication my personal attention, and can say unhesitatingly that the oil and lubricants furnished by the New York Lubricating Company are entirely satisfactory, and I believe them to be as good as any furnished heretofore?"—A. Yes.

Q. Did you hear that?—A. Yes, sir.

Q. Did you hear him say he inquired of his subordinates
7834 before he wrote that letter?—A. No; I didn't hear him say that.

Q. You didn't hear him say that?—A. No; and I don't think he did. I don't remember of him saying it.

Q. Well, he said it.—A. Did he?

Q. Yes.

Mr. ROSENTHAL. Mr. Kellogg is testifying now. That isn't part of the question he is asking you.

Q. Now, Mr. Burgess, do you think that if the engineers reported that this oil was bad and the service was bad, the officials of the Louisville & Nashville road would be writing that sort of a letter?—A. I thought I didn't have to tell anything only what I know.

The EXAMINER. Answer the question.

Q. You have been telling so much, please go on.—A. I don't know what Mr. Curtis would do. I don't think I am responsible for what he did.

Mr. KELLOGG. I would like to have the Examiner instruct the witness to answer the question.

Mr. ROSENTHAL. I think that is an answer to the question.

The EXAMINER. I don't think it is.

Mr. ROSENTHAL. With all due deference to both Mr. Kellogg and the Examiner, I think that is an answer to the question.

(The question was read.)

Mr. ROSENTHAL. I object to it upon the ground that it is immaterial. What this witness thinks is of no consequence at all. And upon the further ground that he has fairly answered the question.

7835 Q. Please answer the question.

The EXAMINER. Answer the question.

A. All right, sir. You want me now to testify——

The EXAMINER. Read the question again.

(The question was read, as follows: "Now, Mr. Burgess, do you think that if the engineers reported that this oil was bad and the service was bad, the officials of the Louisville & Nashville road would be writing that sort of a letter?")

Mr. ROSENTHAL. I object to it upon the ground that the officials of the Louisville & Nashville road never wrote such a letter. It was written by Mr. Curtis, and it has been already testified that it was written on the information that he then had in hand.

Mr. KELLOGG. And that he inquired before he wrote it. Now, will you please answer the question?

A. Well, it would depend on where Mr. Curtis got the information. I don't know where he got the information. He might have got it from sources that he thought would justify him in writing a letter of that kind.

Q. These reports are made to the master mechanic for the information of the people in authority on the road, aren't they?—A. I don't know what they are made for. They are made principally, as I understand it, to account for the delay on the road or the reason for the accident. I don't know that Mr. Curtis reads these reports.

Q. The superintendent of machinery has charge of the opera-
7836 tion of the machinery on the road, hasn't he—general charge?—A. Sure.

Q. These reports are made in order to correct evils, are they not?—A. I would think so, and find out who is to blame for them.

Q. Yes, sir. One of the subjects of importance on a railroad is proper lubrication, isn't it?—A. Yes, sir.

Q. And these reports must, of necessity, be made in order to correct improper lubrication, are they not?—A. Yes, sir. Well, not altogether, I wouldn't think.

Q. Well, to some extent?—A. I would think they were made for the purpose of ascertaining the cause of the delay and if anyone was at fault.

Q. In order for the master mechanic and the superintendent of motive power to know whether the road was being properly lubricated, he has got to go to the reports of you engineers, hasn't he?—A. I suppose he has. I don't know where he goes.

Q. He would be pretty apt to go there, wouldn't he?—A. I don't know whether he would or not. That is up to him. It wasn't up to me.

Q. Oh, certainly; but you men who make the report, in the first instance, are in charge of the train?—A. Sure.

Q. And that is the primary source of inquiry, isn't it?—A. There is where I think they would get the actual cause of the delay and the foundation for making their report. I don't know.

Q. Do you know Mr. P. P. Huston?—A. No, sir.

7837 Q. Never heard of him?—A. Oh, I have heard of him as a purchasing agent.

Q. Of what road?—A. I have heard of him as the purchasing agent of the Louisville & Nashville Railroad, just the same as I have heard that you were Mr. Frank Kellogg, representing the Government, that is all.

Q. How long have you known of Mr. Huston being the purchasing agent of the Louisville & Nashville Railroad?—A. I couldn't say.

Q. When you were there he was purchasing agent, wasn't he?—A. I think he was; yes.

Q. Now, I read you a letter of December 8, 1903, addressed to Mr. Dexter Fairchild, purchasing agent of the New York Central road:

"DEAR SIR: I am in receipt of your favor of December 5th and take pleasure in giving the information you ask for. We are no longer purchasing lubricating oils"——

Mr. ROSENTHAL. Wait a moment. I want to get an objection in there.

Mr. KELLOGG. When I get through you can get in your objection.

Mr. ROSENTHAL. I want to get the objection in now. I want to get in an objection to your reading the letter. It is not to the letter itself. Now, the only time that I can object to your reading the letter is before you have read it.

Mr. KELLOGG. Well, enter your objection.

Mr. ROSENTHAL. That is what I want to do. I object to counsel for the Government reading what purports to be a letter,

7838 or what he has designated as a letter, because there isn't any proof at all that that which he is reading from is a letter, because at best, on his own statement as to what he is reading from, it is inter alios and immaterial.

Q. (Reading):

"*December 8th, 1903.*

"Mr. DEXTER FAIRCHILD."

First, let me ask you if you were with the road there in 1903—Louisville & Nashville Railroad?—A. Yes, sir.

Q. (Reading):

"Mr. DEXTER FAIRCHILD.

"DEAR SIR: I am in receipt of your favor of December 5th and take pleasure in giving the information you ask for. We are no

longer purchasing lubricating oils from the Galena Oil Company, but have a contract with the New York Lubricating Oil Company, and the quality of their oils, delivered, etc., have so far been perfectly satisfactory.

"Yours, truly,

"P. P. HUSTON, *Purchasing Agent.*"

A. All right.

Q. Do you think Mr. Huston would write that sort of a letter if you people were making reports that the oil was bad?

Mr. ROSENTHAL. That I object to upon the ground that there isn't any proof at all that any such letter was ever written, and upon the ground that it is immaterial, and upon the other ground stated in the last objection made.

Q. Please answer the question.—A. All right, sir. I want to say to you very frankly that I do not believe that Mr. Huston can tell me what is the best oil for an engine. I think my 22 years' experience places me in a position to know more about it than Mr. Huston does.

7839 Q. That is your answer, is it?—A. Yes, sir.

Q. Mr. Huston is the purchasing agent, isn't he?—A. Oh, I have heard he was. I don't know whether he is or not.

Q. The purchasing agent purchases supplies and makes contracts for lubrication, doesn't he?—A. I don't know.

Q. You don't know anything about it?—A. No. I wasn't in the mechanical department. Simply an engineer.

Q. You don't purchase them?—A. No; I don't.

Q. The purchasing agent would necessarily have to know something about what he is doing, wouldn't he, on a great railroad system?

Mr. ROSENTHAL. I object to that.

A. I don't know anything about the purchasing agent.

Q. You have been testifying here as an expert.—A. Only as an engineer.

Mr. ROSENTHAL. Not as an expert as to the duties of a purchasing agent.

Q. I will read you this letter.

Mr. ROSENTHAL. I object to your reading that which you state to be a letter. There isn't any proof that it is a letter.

Q. I will go ahead and read it now:

"Personal.

"*November 29th, 1904.*

"Mr. D. FAIRCHILD,

"*Purchasing Agent, New York Central & Hudson River Railroad Company, New York, N. Y.*

"DEAR SIR: Replying to your letter of the 23rd inst. with
7840 reference to lubricating oils. Under contract with the New York Lubricating Oil Company, we have used their oils for nearly two years with entirely satisfactory results both as to quality

and service. We are working under a guaranty cost on mileage basis. I would be glad to advise you cost per thousand miles for the different classes of service, but do not feel at liberty to do so.

"Yours, truly,

"P. P. HUSTON, *Purchasing Agent.*"

Mr. ROSENTHAL. What is the date?

Mr. KELLOGG. That is November 29, 1904, just a few months before their contract ran out.

Mr. ROSENTHAL. Note the same objection as to the reading of the letter.

Q. Now, you think Mr. Huston didn't know what he was about, do you?—A. Oh, no, Mr. Kellogg; I don't know anything about the duties of a purchasing agent.

Q. It would naturally be his duty to buy good material, wouldn't it?—A. Well, you say so. I don't know what his duties are.

Q. Well, what do you think about it?—A. I think the purchasing agent should buy the best material for the least money that he can get. That is what I would think. But then I don't know anything about it.

Q. In order to do that, where would he get the information as to good oil?—A. I don't know.

Q. You don't know?—A. I don't know. I suppose that——

Mr. ROSENTHAL. Depends somewhat on the capacity of the purchasing agent, wouldn't it?

Mr. KELLOGG. Now, let him answer.

7841 Mr. ROSENTHAL. I know, but if you are going into the realms of speculation here, why, we have a right to speculate.

Mr. KELLOGG. He has been speculating for two hours. Now I want him to testify.

Mr. ROSENTHAL. No; he has been testifying to facts.

WITNESS. I have been testifying directly as an engineer.

Q. Where would he get the information as to the quality and efficiency of the lubrication?—A. I don't know where he would get it from.

Q. You don't know what these reports you were making were for?—A. I answered as to those reports. They went to the master mechanic, and that is all I know about it.

Q. It would be very easy for the purchasing agent to see them, would it?—A. Why, I suppose he could get them if he wanted to.

Q. Wouldn't that be the place for him to get his information?—A. I don't know where he would get it.

Q. You don't know?—A. No. I had nothing to do with the purchasing agent nor he with me.

Q. Now, I wish to read you a letter to Mr. Burnett, purchasing agent of the Norfolk & Western, when Mr. Rosenthal has entered his objection.

Mr. ROSENTHAL. Same objection as to the other.

Q. (Reading):

"Mr. E. G. BURNETT,

"*Purchasing Agent Norfolk & Western Railway,*

"*Roanoke, Virginia.*

"DATED FEBRUARY 10, 1905.

"DEAR SIR: Your letter of the 8th inst. Your information is not quite correct. We have not terminated our contract with the
7842 New York Lubricating Oil Company, but after its expiration we will return to the Galena-Signal Oil Company, which company previously served us for several years. I beg leave to advise, however, that the quality of oil furnished, results obtained, and service rendered by the New York Company were highly satisfactory.

"Yours truly,

"P. P. HUSTON, *Purchasing Agent.*"

Now, do you still think that the oil was all bad and that your officials were all wrong?—A. No, sir; I never said that.

Q. I want to call your attention to another letter.

Mr. ROSENTHAL. Same objection as to the last.

Q. (Reading):

"OCTOBER 7th, 1904

"Mr. E. G. BURNETT,

"*Purchasing Agent, Norfolk & Western Railway,*

"*Roanoke, Virginia.*

"DEAR SIR: Your letter of the 3rd inst. The New York Lubricating Oil Company has been supplying us with lubricating oils for the past eighteen months, and their oils and service have been very satisfactory, results in every way as good as obtained under contract with the Galena Company.

"Yours truly,

"P. P. HUSTON, *Purchasing Agent.*"

Mr. ROSENTHAL. Same objection.

Q. Do you think Mr. Huston was mistaken?—A. No; I don't know anything about Mr. Huston.

Q. You don't?—A. No.

Q. Well, he is talking about these oils that you say were not as good.—A. Yes; and I am talking about the oils that I used, too, and was accountable for the delay.

Q. I read you a letter dated February 11, 1905, to Mr. Howard James, purchasing agent of the Great Northern Railway line.
7843 Mr. ROSENTHAL. Same objection. We would like to see those that you have read.

Mr. KELLOGG. Certainly.

[Mr. Kellogg hands papers to Mr. Rosenthal.]

Q. (Reading):

"GREAT NORTHERN RAILWAY LINE,
"*St. Paul, Minnesota*

"DEAR SIR:"——

Mr. ROSENTHAL. You mean that you are reading now what purports to be a copy of a letter?

Mr. KELLOGG. I mean that I am reading something which is a sworn copy by Mr. Huston himself.

Mr ROSENTHAL. You mean that which you are reading, of every paper that you have handed me, only purports to be a copy of a letter?

Mr. KELLOGG. That is all, sir. The original is in the hands of the Louisville & Nashville road. This is a copy. It doesn't purport to be anything.

Mr. ROSENTHAL. You haven't seen the originals, have you?

Mr. KELLOGG. No; but others have, and compared them. We will prove that they are copies of originals.

Mr. ROSENTHAL. Now, since my other objections have been made, there have been handed to me what purport to be copies of letters dated October 7, 1904, February 10, 1905, November 29, 1904, and December 8, 1903, the same purporting to be four certain letters signed by P. P. Huston, purchasing agent, or, rather, copies of letters signed by P. P. Huston, purchasing agent. None of them is upon any letter-head, none of them is signed in ink. All of 7844 the matter that appears upon all four copies is entirely in typewriting. I wish to add to the objection heretofore made that that which was read from was not even a letter.

Mr. KELLOGG. I will say in reply to that that these were furnished under a subpœna; the originals were furnished and copied. We will show these to be accurate copies of the originals and will have the originals produced unless they are destroyed.

Q. (Reading):

"Mr. HOWARD JAMES,
"*Purchasing Agent, Great Northern Railway Line,*
"*St. Paul, Minnesota.*

"DEAR SIR: Your letter of the 9th inst. with reference to lubricants furnished by the New York Lubricating Oil Company. Our contract with that company is based on very favorable price, both as to original cost of oils and guaranteed cost. The use of their products has proven quite economical. The quality of oil furnished, service rendered, and results obtained have been altogether satisfactory.

"Yours truly,

P. P. HUSTON, *Purchasing Agent.*"

Another letter, dated December 10, 1904, marked "Personal:"

"Mr. E. H. BANKARD,
"*P. A., B. & O. R. R. Co., Baltimore, Md.*

"DEAR SIR: Contract for lubricating oil. Your letter of the 6th inst., No. 1. Our contract with the New York Lubricating Oil

Company has been quite satisfactory both as to quality of material furnished and service rendered. The cost of lubrication under contract with them has been materially less than under former contract with the Galena-Signal Oil Company.

"Yours truly,

P. P. HUSTON, *Purchasing Agent.*"

Now, Mr. Burgess, you still think that Mr. Huston, the pur-
7845 chasing agent who had charge of purchasing the oils; Mr. Curtis, the superintendent of motive power, and Mr. Smith, the president of the road, are all mistaken about this, do you?—A. I never said that.

Q. Well, what do you think?—A. I don't know anything——

Mr. ROSENTHAL. Well, wait a minute. I object to what the witness thinks, and object to your question upon the ground that the record already shows that Mr. Curtis has himself testified that he was utterly mistaken at the time he wrote the letter; he wrote the letter based upon his information at that time, and that since then he has further and additional information that he has caused him to change his opinion.

Mr. KELLOGG. He didn't testify to that.

Mr. ROSENTHAL. And that there isn't anything in this record at all as to what Mr. Smith thinks about the matter or what his information is about the matter.

Mr. KELLOGG. Mr. Curtis didn't testify to anything of the kind, about his being mistaken.

Mr. ROSENTHAL. Well, I say that he did.

Q. You think these gentlemen were mistaken, and that the oil wasn't as good as the Galena, do you?—A. I don't know, Mr Kellogg, what prompted them to write that letter, and I don't think I can voice an opinion on that. I am giving you my evidence from the standpoint of an engineer that absolutely tried it. I know nothing about what prompted them, and I had no communication with Mr. Huston one way or the other. I wouldn't know the gentleman if I met him.

Q. But you know they were not as good as the Galena-Signal
7846 oils were?—A. Absolutely.

Q. And you are as sure of that, I suppose, as any other fact you have been testifying about for a couple of hours?—A. I haven't been telling anything under oath that I wasn't sure of without qualifying it.

Q. Now, I believe you said that during the time you were using the New York Lubricating oils you had your buckets filled and used all you pleased?—A. Yes, sir; we had our can that was furnished to carry the black oil in. Now, I don't want this confused with a hand oiler. We had a 3-gallon hand oiler. Then we had a bucket to carry a supply, which carried 2 gallons of oil, and 1 gallon in the valve oil, and we were allowed to fill those buckets.

Q. Were you allowed to under the Galena practice?—A. No. We were allowed 5 and 12, if I remember correctly.

Q. What harm was that, in your filling your buckets?—A. Why, there was no harm that I know of.

Q. Then, what is that against the New York Lubricating oils, that you were allowed to fill your buckets?—A. I don't know that it was anything against them.

Q. Well, what is the object of impressing it on the court?—A. Ask the attorney that asked the question. I am not the attorney.

Q. You used more of that, did you, than the Galena?—A. Used more of what?

Q. Of the New York Lubricating oils.—A. Sure.

7847 Q. You used more?—A. Yes.

Q. Which oil—valve oil?—A. Both.

Q. You used more valve oil of the New York Lubricating?—A. And more engine oil.

Q. And more engine oil?—A. Yes, sir.

Q. Now, you are speaking of the valve and the engine oil, are you?—A. Yes, sir.

Q. Prior to the New York Lubricating contract, that is, prior to March 1, 1903, you were using Galena oils?—A. Yes, sir.

Q. And Galena valve oil and Galena engine oil?—A. Yes, sir.

Q. And you used more New York than you did Galena?—A. Yes, sir.

Q. And is that generally true on the road, do you think, or just true of your engine?—A. Oh, no; true of the other engineers.

Q. Do you think that is true all over the road?—A. Well, at that time I was just in between; that is, I was representing the engineers between Nashville and Louisville, but after I became general chairman they told me the same thing over the road.

Q. And you used more during the New York Lubricating contract than you did the year following when you did the Galena's again?

Mr. ROSENTHAL. More what?

Mr. KELLOGG. More oil.

A. Sure.

7848 Q. That is, you mean more per 1,000-mile run, don't you?—A. I suppose it would figure out that way. I was answering per trip, though.

Q. It is kept track of in the office?—A. Yes, it is kept track of.

Q. So much oil used per 1,000-mile locomotive run?—A. Yes.

Q. And those statements you turned in as an engineer?—A. No.

Q. How did they measure out the oil to you? How did you arrive at it?—A. Well, they charged you with so much oil that they put on the engine.

Q. In other words, they kept track of the amount of oil used to lubricate the engine, valve oil and engine oil?—A. Yes. I think I can make that plain to you.

Q. I wish you would.—A. Every engineer has a number, and these cans have a little number soldered on it, you know, and when the oil clerk fills the can and places them in his locker, he charges so

much oil, and if you draw any extra oil you have to take out a ticket or a red card, like that.

Q. So that they keep track of the amount of oil used to lubricate engines per 1,000-mile run?—A. So far as I know. All I know is from the engineer's standpoint.

Q. Then, the railroad company would know from its reports and from its records the amount of valve oil used per 1,000 miles run of an engine?—A. I presume it would.

7849 Q. That is your understanding, isn't it?—A. I suppose that they keep track of that, yes.

Q. And they would know the number of miles run per pint of engine oil?—A. I suppose so.

Q. You have been in the roundhouse, haven't you, of the Louisville & Nashville Railroad?—A. Yes, I went in there every trip.

Q. Don't you know they post a performance sheet in the roundhouse, showing the performance?—A. Yes, sir.

Q. Number of miles run per pint of oil?—A. Yes, sir.

Q. So that the engineers and everybody can see it?—A. Yes. I watched it very closely.

Q. Now, it appears in this case in evidence that under the New York Lubricating contract for two years its engines made more miles on a pint of valve oil than it did under the Galena. You must be mistaken, then, aren't you?—A. No, sir, I am not.

Mr. ROSENTHAL. Show him the figures. We say it does not.

Mr. KELLOGG. For a period of two years.

Mr. CRAWFORD. Where does that appear?

Q. If it is a fact that the records in evidence show that under the New York Lubricating contract the engines made as many or more miles per pint of valve oil than they did the year before under the Galena and the year following under the Galena, then you would say that you are mistaken, wouldn't you?—A. No, sir, I am giving you my evidence here from the standpoint of an engineer.

7850 Q. Did you keep figures showing the exact mileage you made?—A. No, sir; but I knew how many trips I made a month, and I knew what supplies I had going out on the Galena, and I knew what I had when I was with the New York.

Q. And you would say that your bare recollection is better than the actual reports and figures made by the railway company?—A. Absolutely, in this respect.

Q. I expected you would.—A. Because I know what I did.

Q. Oh, certainly. They have the actual record of the consumption on all engines and by all engines, haven't they?—A. They may have.

Q. You know they have, don't you?—A. I have seen the records up there, and I don't know whether they have got them or not.

Q. You don't know whether they are guesses or whether they are correct?—A. I have seen the records up there, but I don't know whether they keep them or not.

Q. Suppose that the records kept by the railroad company show substantially that during the term of the New York Lubricating

contract for the year 1905 its engines made substantially 66 miles per pint, what would you say as to that as a comparison with the Galena's?

Mr. ROSENTHAL. I object to that for two reasons. It is a hypothetical question that is not based upon any testimony or any
7851 record in this case, in the first place; and, in the second place, it already appears from the record that the Galena contract began on the 28th day of February, 1905, making substantially the whole of the year 1905.

Mr. KELLOGG. Oh, no; you are entirely mistaken.

Mr. ROSENTHAL. No; I am not. The contract began on February 28, 1905.

Mr. KELLOGG. Oh, the Galena?

Mr. ROSENTHAL. Making the whole hypothesis of the question entirely wrong on the record already in this case.

Q. Let me ask another question. How many miles to the pint do you ordinarily run of valve oil?—A. Well, engineers differ on that.

Q. What is the average?—A. Well, with different engines and different trains, Mr. Kellogg——

Q. I say what is the average?—A. I couldn't give it to you.

Q. You don't know?—A. I could give you what they want and what they are trying to reach on; for instance, a heavy passenger train—a heavy passenger train run like I pulled. If a man run around 70 miles to the pint, of valve oil, he was doing pretty well. Some engineers, however, only run 30. Some trips you couldn't run that far. I wouldn't like to make a blanket average on that.

Q. Then, of course, passenger engines are built to run faster and they don't haul as big a load as freight engines?—A. I know, but on the heavy fast passenger train, Mr. Kellogg, the engine is taxed nearly as much.

7852 Q. Doesn't a large freight locomotive, with a heavy train, use more valve oil to the mile run than a passenger engine?—A. Well, yes.

Q. It does?—A. But not much more than a heavy fast passenger engine.

Q. Now, what would you say was a fair average of all engines on the L. & N. road per pint of valve oil?

Mr. ROSENTHAL. I object to that.

A. I couldn't answer that with any degree of reliability.

Q. Give us your best opinion.—A. I couldn't do that.

Mr. ROSENTHAL. I object to it because the question itself calls for his opinion and he has already said he hasn't any opinion.

Q. If heavy freight engines use more oil than passenger engines, what would you say of 60 miles on all the engines on the road?—A. 60 miles?

Q. Yes; per pint of valve oil.—A. I wouldn't think that was a very good average.

Q. What would you say was a good average of all the engines?—A. I don't know. I wouldn't think that 60 miles was a fair average

on all the engines. In fact, I would have to know the number of light engines compared with the number of big ones, and I don't know that.

Q. You don't?—A. No.

Q. Now, that is why the records of the company showing this fact are more accurate, aren't they?—A. I don't know anything about that.

7853 Q. They certainly would be, wouldn't they?—A. I am testifying from the standpoint of an engineer.

Q. How many miles did you make per pint?—A. Well, on the New York oil, as I say, I had my bucket full. On the Galena oil I had to make a round trip, 187-mile round trip, on 6 pints of valve oil and 12 of black. Now you can figure that up yourself.

Q. 187 miles?—A. Double.

Q. Double 187?—A. Yes.

Q. On 6 pints?—A. On 5 pints, rather, of valve oil and 12 pints of engine oil.

Q. That is what you did?—A. That is what I was supposed to do. I didn't always do it.

Q. You didn't always do it, did you?—A. No. Sometimes.

Q. What do you think you averaged?—A. I don't know.

Q. It appears by the record in evidence in this case that the Galena-Signal for 14 months ending February 28, 1903, made 64.9 miles.

Mr. ROSENTHAL. We have got it here for every year except 1903. We have got it from 1897 to 1902. It runs from 65.65 miles to 76.86 miles.

Q. Well, what would you say as to whether they made 64.9 miles in 1903?—A. I don't remember that.

Q. It appears that the New York Lubricating for the next year but one, the year ending February 28, 1905, made 66 miles.—A. The New York?

7854 Q. Yes; on all of its engines.—A. On the L. & N.?

Q. Yes, sir; on the L. & N.

Mr. ROSENTHAL. To be exact, it is 65.98.

Q. That is pretty fair, isn't it?—A. The second year?

Q. The second year of their contract.—A. What was the first year?

Mr. ROSENTHAL. 58.25 miles per pint.

A. Well, that is all right; that bears me out.

Q. They didn't use all of their oil that year, any more than you did the first year of your second contract?

Mr. ROSENTHAL. That would be to your advantage.

Mr. KELLOGG. I don't think so.

Q. Now, what have you got to say about that?—A. About what?

Q. 66 miles as compared with the Galena's 64.9. Those are the figures that appear here in evidence.—A. I don't know anything about the figures. I was testifying to my experience.

Q. The second year of the Galena contract, February 28, 1907, shows only 63.9 miles.—A. You understand that after they had been

used to handling as much oil, it takes a little time to get engineers instructed to get it down.

Q. Certainly. So that the first year of the New York Lubricating Company wouldn't make as good a showing as they did the second, would it?—A. They couldn't, because they gave us all we wanted to use, and then in the second year, I testified, they commenced to curtail a little.

7855 Q. Isn't that true of any company taking a contract on a road—that the second year they can make a better showing than they can the first year?—A. I suppose, taking the Galena when they first came there, in 1897, of course every company would have to learn us how to oil. We used to oil every 20 miles then.

Q. I am not talking about that. You said the second year of the contract they would make a better showing than the first?—A. I was trying to qualify that by saying that when the Galena came back the second time the engineers were familiar with their methods, and they were not the first year.

Q. It appears that the first year the Galena came back they made 65.6 miles, and the second year only 63.9?—A. Well, that might be a different way of charging the accounts; I don't know; charging it to new material; I don't know how they charged it; I don't know how they make it up; I don't know anything about it. I can understand very readily if you would charge the oil to different points, it would make a different result.

Q. These exhibits are those introduced by the Galena-Signal Oil Company in this case.—A. I don't know anything about them; never have seen them; don't know anything about them; wouldn't understand them if I did, perhaps.

Q. Well, you do know that railroads keep their reports showing the amount of oil per 1,000-mile run, don't you?—A. I know——

7856 Q. And that they post them in the roundhouses, don't you?—A. Yes, I know that, because I consulted them every month to see how my record was.

Q. Now you say, for sixty days you were traveling engineer?—A. Yes, sir.

Q. Who has been the traveling engineer on that road for a good many years?—A. Dennis Kelly.

Q. He is yet, is he?—A. He was the last I heard of him.

Q. And he was during all the time you worked there, was he not?—A. Yes.

Q. He is an old employee of that line?—A. Yes.

Q. He is the man that had charge of the work of inspecting the engines and looking after the engineers over the line generally?—A. Yes.

Q. What opportunity did you have, during your 60 days as traveling engineer, that you didn't have as an engineer?—A. I don't suppose in that space of time that I had very much—in 60 days.

Q. I mean during that 60 days what was the opportunity? Did you inspect the engines and talk with the engineers?—A. While I was on, yes.

Q. Did that include lubrication?—A. Yes. I would watch the engineer oil, and watch how he worked his lubricator, etc.

Q. Inquire into how the lubricator worked?—A. Yes.

Q. How the oil worked?—A. Yes.

Q. Generally inquired into the effect of the lubrication?—
7857 A. Oh, no. No, I wouldn't put it that way. You are putting it too strong.

Q. Well, you put it then.—A. I answered your question.

Q. Well, I suppose Mr. Kelly would do the same thing, wouldn't he?—A. I don't know what Kelly does. I know that he is traveling engineer.

Q. Did he ever come around your engine?—A. Yes.

Q. Did he inquire of you?—A. When I was running the engine?

Q. Yes.—A. No.

Q. Never inquired of you?—A. Never made any inquiries to me. Just said: "How are you getting along, Fred?" and rode on the engine.

Q. I suppose he was perfectly satisfied with you without an inquiry?—A. Well, that is for you to assume. I didn't state that.

Q. Now, did you make any objection to Mr. Kelly, to this lubricant?—A. I don't remember whether I did or not.

Q. How often did you see him?—A. Oh, sometimes I would see him once in six weeks, and sometimes I wouldn't see him for three months.

Q. During this two years that you were using this bad oil of the New York Lubricating Company you saw him a good many times, did you?—A. I don't know whether I did or not.

Q. Well, how many times?—A. I couldn't say.

Q. Did you see him at all?—A. Oh, yes.

Q. How many times do you suppose you saw him?—A. I couldn't say.

7858 Q. Three time in two years?—A. I don't know.

Q. Don't know anything about it?—A. Oh, I don't say I don't know anything about it. But I don't know how many times I would see him. I would probably see him on trains going by, when I couldn't speak to him.

Q. Well, I mean when he was talking to you about——A. I couldn't say how many times I saw him.

Q. Did you ever make any objection to Mr. Kelly about this oil?—A. I don't know whether I have or not. I know I did to the master mechanic and the roundhouse foreman, but I don't know whether I said anything——

Q. What master mechanic did you make objection to?—A. Well, Mr. Giles.

Q. Where is Mr. Giles now?—A. He is in Louisville, Kentucky.

Q. Working for this road?—A. He is assistant superintendent of machinery now.

Q. You made objections to Mr. Giles?—A. Yes, sir; and also to Mr. Clifford, who is master mechanic at South Louisville; he has charge of the engineers now.

Q. What did you tell him about it?—A. I couldn't remember what I told him.

Q. You told him they were bad, did you?—A. The substance of what I told him—I couldn't remember the words—was that I couldn't make the runs with the valve oil or the black oil—or the engine oil.

7859 Q. How early in the contracts did you tell him that?—A. I don't know. Not until after I tested it, tried it; I don't know how long that took me.

Q. Two or three months?—A. Oh, no.

Q. A month?—A. No; I don't think it would be over six or seven days.

Q. Immediately after you commenced using these New York oils you told Mr. Giles that?—A. Mr. Giles or Mr. Clifford, one or the other.

Q. Do you remember telling anybody else that?—A. I remember of speaking to John Flynn about it. He was foreman of the round-house.

Q. Where?—A. He is in Nashville now. At that time he was foreman at Louisville.

Q. Anyone else?—A. Talked to the engineers about it, and they talked to me.

Q. I suppose it was general talk among the engineers?—A. Yes, sir.

Q. That it was bad oil?—A. There was general talk about the change to the New York oil and how the engine performed with it.

Q. And that it wasn't satisfactory?—A. That it wasn't satisfactory.

Q. That was the general talk among the engineers?—A. Yes, sir.

Q. Now, isn't it kind of funny that the officials never heard of this?—A. I don't know. What officials?

7860 Q. Mr. Huston, Mr. Curtis, Mr. Smith, and Mr. Kelly himself.—A. I don't know anything about Mr. Huston or Mr. Smith, or what they heard. I am telling you who I reported to. We had nothing to do with Mr. Huston.

Q. Now, you said the causes of hot boxes were thin brasses, broken brasses, the packing getting dry, the packing dropping down from the journal, and the overloading of cars.—A. I think that would be so.

Q. Brasses get thin when they get worn out, do they?—A. Yes, sir.

Q. And if they are not taken out they are apt to make a hot box?—A. Yes; they are apt to break, you know, when they get too thin, and of course that would make a hot box.

Q. That wouldn't be caused by the bad oil, would it?—A. No; that would do it with any oil.

Q. The packing getting dry would be due to lack of attention, wouldn't it—proper oiling?—A. Yes.

Q. That would not be necessarily the bad oil?—A. No.

Q. The packing dropping down from the journal, that would be lack of attention, wouldn't it?—A. Yes.

Q. And the overloading of the car, that wouldn't have anything to do with the oil?—A. No.

Q. Well, all those causes that you named, not one of them has to do with the quality of oil, has it?—A. No; not—I don't understand your question. All the causes have nothing to do with the oil?

Q. That is, the quality of the oil has nothing to do with
7861 those particular things I just mentioned—broken brasses, thin brasses, and such like?—A. No: that is right.

Mr. ROSENTHAL. You mean it has to do with the dryness of the waste?

Mr. KELLOGG. Now, let the witness give his answer.

Mr. ROSENTHAL. I am asking him whether it might have to do with the dryness of the waste.

WITNESS. I suppose the oil could get thin. Real thin oil would make the waste dry. But those causes that you are asking me—those are some of the causes.

Q. And the oil has nothing to do with those causes that I asked you about?—A. No.

Q. Now, all of those do cause hot boxes on trains?—A. Yes.

Q. Then you didn't mean to say that 95 per cent of all hot boxes on trains was due to bad oil, did you?—A. Yes; absolutely. I claim that those causes all together would not be 5 per cent.

Q. Well, you didn't mention any other except those?—A. Yes; I did.

Q. What were the others?—A. I think I said—if I didn't I will state it now—that where you found a box properly packed and the waste not dry and she got hot that that was defective lubrication.

Q. Do you think that the hot boxes that occurred under the Galena-Signal Oil Company's contract that 95 per cent of those were due to bad oil?—A. I suppose it was; yes.

Q. Then they are selling your company bad oil, are they?—
7862 A. I don't know whether they are or not.

Q. Now, it appears, according to an exhibit in evidence, put in by the Galena-Signal Oil Company, that for 11 months from July 1, 1906, to May, 1907, there were 148 delays due to hot boxes on locomotives, in eleven months.—A. Yes.

Q. Now, you think that 95 per cent of those was due to bad oil, do you, furnished by the Galena-Signal Oil Company?—A. If the box was taken care of all right, yes, properly packed. That is driving boxes, is it?

Q. Well, that is the number of delays, boxes on locomotives; I don't know whether it is driving boxes, or what it is. Locomotives

Now, you think that is due to bad oil, do you?—A. No; what I mean to testify, if the box is properly packed, that these causes that I have cited there will only contribute about 5 per cent of the actual delays, in my opinion.

Q. In the actual practice on the road, you think only 5 per cent of the hot boxes are due to these causes you named—thin brasses, etc., and the other 95 per cent to the quality of the oil? That is correct, is it?—A. Well, if they were properly taken care of.

Q. That would be the same under the New York Lubricating contract, wouldn't it?—A. Yes, sure, under any oil.

Q. Now, take these number of delays on passenger locomotives—passenger cars, from July 1, 1906, to May 1, 1907, 167, with the use of Galena oils; what do you think was the cause of most of those? Bad oil?—A. I don't know.

7863 Q. You don't know?—A. No. If I was on the train and looked at the box, like I did when I was testifying, I could tell you whether they were packed properly, or whether the packing was away from the journal, or whether occasionally a thin brass—that is very, very seldom.

Q. Well, as a matter of fact, aren't very few of these hot boxes caused by the quality of the oil at all?—A. No, I wouldn't think so.

Q. And caused by the inattention of the man who used it, isn't it?—A. No, I wouldn't think so.

Q. What percentage do you think of hot boxes is due to the quality of the oil?—A. I couldn't answer that unless I was right on the ground and saw the box when it got hot.

Q. Then you don't know anything about it, do you?—A. Yes, I do know something about it.

Q. What do you know about it?—A. I am testifying my experience with the two oils. That is what I am telling you.

Q. Do you think that the hot boxes were caused, under the New York Lubricating contract, by the bad oil?—A. I think this: running the same engine with one oil, and change the oil and give me the other oil and the same engine and the same run and she gets hot pretty near twice as much as she did with the other oil, I think then that it is the oil. I base that on my knowledge as an engineer.

Q. And yet, all the causes you gave here have nothing to do with oil at all?—A. Well, some of them there haven't, of course.

7864 Q. When did you commence to use the Galena oil after the New York Lubricating contract?—A. I would judge we had the New York oil about two years, somewhere about that.

Q. Two years from what time?—A. I think from 1903.

Q. From March 1, 1903?—A. Somewhere along there; it seems to me it was in March.

Q. You used the New York oils for two years?—A. Yes; about two years, I should think.

Q. Tell me about when you commenced to use the Galena oils?—A. I think about in 1905.

Q. What month?—A. I don't remember the month. It seems to me it was in April; I am not sure, though.

Q. The first of April, or first of March?—A. I don't know; I couldn't say.

Q. Isn't it a fact that you used the New York oils nearly all summer during the summer of 1905?—A. I don't think so. Not to the best of my knowledge.

Q. Didn't you use the New York oils for four months after the contract ran out the first of March, 1905?—A. No; not as I remember now.

Q. Your memory is that they only used them one month?—A. I think it was one month. It might have been six weeks or two months, I don't know, but I don't think it was four months, Mr. Keilogg. I don't remember about that.

Q. Well, was it three months?—A. I wouldn't like to say.

Mr. ROSENTHAL. He has just said that he doesn't remember.

7865 Q. Now, give us the number of trains that you ran on that road—I mean their number as known on the road—from 1900 down to the time you quit their service.—A. From 1900?

Q. Yes, I mean their numbers; whether it was No. 1 or 4, and running between such and such places.—A. I couldn't do it. 1900 I could give you the trains while I was on passenger and fast freight.

Q. Well, give us that. When did you commence on passenger?—A. I commenced on passenger, I think, in 1901.

Q. From that time to the time you quit did you run the same train?—A. I had four trains to run.

Q. What were their numbers?—A. No. 7 down.

Q. Running from what place?—A. Louisville to Nashville. No. 4 from Nashville to Louisville. No. 3 from Louisville to Nashville. And No. 2 from Nashville to Louisville.

Q. Did you run any other passenger trains during that time?—A. Occasionally they would call me to go out on an extra, but I was generally on those runs.

Q. Were there any other engineers on those trains besides yourself?—A. Yes; there were five of us assigned to those runs.

Q. Now, do the records show what runs you made and what runs the other engineers made?—A. I suppose the train sheet would show that.

Q. Did you make any report of hot boxes when you were running freight trains?—A. We didn't make a report on that on the

7866 freight trains. On the fast freight we did, but on the slow freight we didn't—unless it was a very serious delay.

Q. On the fast freights you made regular reports?—A. Yes; just like the passenger.

Redirect examination by Mr. ROSENTHAL:

Q. You don't know much about the position of the purchasing agent; I suppose, Mr. Burgess, in knocking around the world for forty odd years you can conceive, inasmuch as you have been asked what you think, that a purchasing agent who made a bad contract

with a lubricating company in 1903 for his road for a period of two years, might, in order to justify that contract or justify his position and hold onto his position, keep on insisting that the contract was a good contract and the results thereunder were satisfactory?—A. I think that is what he would do, as far as——

Mr. KELLOGG. That is objected to. In the first place, the purchasing agent didn't make the contract; it was made by Milton H. Smith himself, the president of the company.

Mr. ROSENTHAL. Now, who is testifying again, you or the witness?

Mr. KELLOGG. Well, the contract is in evidence. I am stating the fact.

Q. That is within the bounds of possibility?—A. Yes, sir.

7867 WILLIAM HOLMES, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Mr. Holmes, where do you live?—A. In Louisville, Kentucky.

Q. What is your business?—A. Expert for the Galena-Signal Oil Company.

Q. What roads have you charge of?—A. The Louisville & Nashville; the Nashville, Chattanooga & St. Louis; and the Virginia & Southwestern.

Q. What is the track mileage of the Louisville & Nashville?—A. About 5,000 miles.

Q. It is substantially a single track road, is it?—A. Yes.

Q. How are the other roads you have named situated in relation to the Louisville & Nashville; do they connect with it?—A. Yes.

Q. You can readily then go from one to the other, can you?—A. Yes.

Q. What is the length of those other roads you mentioned? You spoke of the Nashville, Chattanooga & St. Louis and the Virginia & Southwestern?—A. Approximately 1,500 miles.

Q. How much of your time do you devote to your duties on the Louisville & Nashville road?—A. I would say about two-thirds of my time.

7868 Q. How long have you been in the employ of the Galena-Signal Oil Company?—A. The last time, I came with them three years ago the first of last April.

Q. That would be April, 1905?—A. Yes, sir.

Q. Now, state generally what your previous railroad experience had been.—A. I put in two years in the shop as machinist's assistant with the Grand Trunk, about five years as locomotive fireman, seven years as locomotive engineer, one year as travelling engineer, and about two years or a little more as master of trains.

Q. Was that all on the Grand Trunk road?—A. All on the Grand Trunk; yes, sir.

Q. How soon after your employment by the Galena company the last time were you assigned to the Louisville & Nashville road?—A. Immediately.

Q. In April, 1905?—A. Yes, sir.

Q. What oils did you find in use on the system when you got there?—A. New York oils.

Q. The contract with the Galena company had then been made about a month, as I recollect it?—A. Yes, sir.

Q. It has been so testified here. How was it that you found the New York oils in use?—A. On account of the New York company being situated so far away from New York it was necessary for them to carry a supply in the Union Warehouse at Louisville to supply the railroad companies, and necessarily they had quite a good amount on hand there, in addition to what was on hand at the different points on the road.

7869 Q. Then it was those oils that were on hand, that were continued to be used after the contract went into effect, was it?—A. Yes, sir.

Q. How long were the New York oils generally used on the Louisville & Nashville after you went there?—A. There was very little Galena oil used, as I remember it, until July.

Q. July of what year?—A. Of 1905.

Q. So that from March to June, inclusive, you mean to say that the oil used was substantially the New York oil?—A. Yes, sir.

Q. When you went there as an expert on the Louisville & Nashville, what did you do during the first months you were there as an expert?—A. I went over the entire system, visited the master mechanics, met the travelling engineers, engineers, foremen, and, in a general way, got acquainted with the personnel of the road.

Q. Did you have occasion to observe the performance of lubrication or the road while the New York oils were being used?—A. I did.

Q. What did you observe in regard to it?—A. I found they were having a great many hot boxes on all their equipment, passenger and freight cars, and engines. The car men complained, in fact, took me to the vats and told me different cases where the car oil had been put on the waste for the purpose of saturation, and the waste after being left there for two or three days would not be wet down more than two or three inches, and it was necessary for them to work this oil through the waste with their hands. They also showed me

7870 oil that had come out of the barrels. In a great many cases the oil appeared to have separated, the lighter oil coming to the top and the heavier oil to the bottom. When a barrel was put up, the light oil would run out freely, and the other oil, they had great difficulty in getting it out of the barrel.

Q. Is this something that you saw yourself?—A. Yes, sir.

Q. And what else are you speaking of now?—A. The New York Lubricating Company's oils.

Q. Do you recollect anything about the repairs of locomotives during that period while the New York oils were still in use?—A. Yes, sir.

Q. Tell us about that.—A. The drop pits to a great extent were occupied——

Q. Explain what a drop pit is.—A. A drop pit is where an engine is run over to drop a pair of driving wheels, to repair a box, or anything that may be necessary.

Q. Is it in a round house?—A. Yes, sir.

Q. It is an excavation, is it, below the surface of the ground?—A. Yes, sir.

Q. And the engine is run over it?—A. Yes, sir, and the disconnections made.

Q. And the truck is supported, is it—the axle is supported?—A. Yes, sir.

Q. And then the wheel is dropped down into what you call the pit—this excavation?—A. Yes, sir.

Q. Now, you say those pits were occupied. What do you mean by that?—A. They were occupied by engines on there for work, and to a great extent it was due to hot driving boxes.

7871 Q. You say there were engines on there for work. What do you mean by that?—A. Well, it may not have been all, and I don't expect that it was all due to hot driving boxes. A wheel may have to be dropped for different reasons, and there is no doubt there were a number of those cases that were for other reasons than hot boxes.

Q. Well, they were put there and the wheels were dropped for the purpose of repairs, were they?—A. Yes, sir.

Q. Whatever the cause was, that was the purpose of taking them and dropping the wheels into the pit?—A. Yes, sir.

Q. Now, did you know the causes of some of these repairs, or many of them?—A. A great many of them, yes.

Q. Were some of them due to hot boxes?—A. Yes; a great many of them.

Q. What was the fact in regard to the commonness of engines being placed over these pits and the wheels dropped for the sake of repairs after the Galena oils were put into use over the system?—A. It was a very rare occurrence for an engine to be on the drop pit, and I have been told by different master mechanics, and I have seen it myself, that since the Galena oils have come back, that they have very little trouble of that kind.

Q. Do you know what it costs in the case of repairs caused by a hot journal or hot box on a locomotive, to drop the wheel and take the parts off to make the repairs, on the average?—A. Costs them $10 to $30.

Q. Does that estimate include the value of the brasses?—A. No, sir.

7872 Q. How much do they cost in addition?—A. That would altogether depend on the size of the brass.

Q. Can you give any range?—A. It costs about 17 cents a pound, and they run in weight from 60 to 120 pounds.

Q. 60 to 125 pounds?—A. Yes.

Q. How many drop pits were there on the whole L. & N. system in the year 1905?—A. I don't know exactly, but I would say about 15.

Q. And what do you say as to the extent to which these were in use when you first went there, on the L. & N.?—A. They were continually in use, and at a number of points there were engines waiting to take the drop pits.

Q. You mean waiting because one was occupied already?—A. Yes, sir.

Q. How long would an engine undergoing such repairs be out of service?—A. I would say from one to three days.

Q. What have you to say generaly about the number of hot boxes on the L. & N. during the period when the New York oils were in use, the first four months of your term, and the number of hot boxes subsequently, after the Galena oils had come into thorough use?—A. After we got the Galena oils in use, and got them established and going, we had comparatively little trouble there.

Q. Well, I have asked you to make a comparison, as you remember it, from your actual memory. You were on the road. Was there more or less?—A. There was less.

7873 Q. Less when?—A. With the Galena oils.

Q. What method of packing boxes, if any, did you introduce on the Louisville & Nashville road?—A. What do you mean?

Q. Of packing the bearings.—A. Of cars?

Q. Cars or engines, or whatever you——A. Our method is to saturate the waste for at least 48 hours, submerge it in oil, and then drain it from 24 to 40 hours, as the case might be, depending altogether on the condition of the weather and the temperature that the oil was in, and instruct the car man in our method of packing boxes, making a roll and putting it up next to the back of the box, so as to retain the oil in the box, packing the box loosely at the end of the journal, and then putting in a piece at the end to retain the waste under the journal.

Q. What did you instruct the employees of the Louisville & Nashville to do with regard to lubrication?—A. That is what I instructed them to do.

Q. And did you see that that was carried out?—A. As nearly as I could; yes, sir.

Q. Were there any other improvements in methods of lubrication, which you put in operation there on the Louisville & Nashville road, or tried to?—A. I suggested a great many things, but I don't know just exactly what you mean.

Q. Well, anything about supervision over the packing of engines. What did you do about that?—A. I took that up with the master mechanics at the different points and tried to establish a sys-

7874 tem of looking after the engines once a month—that is, taking down the cellars and seeing that the waste was in proper condition in the cellar.

Q. What do you mean by the cellar?—A. A driving-box cellar is the device that holds the waste to the journal.

Q. On an engine bearing?—A. Yes, sir.

Q. And it is below the bearing, is it?—A. Yes, sir.

Q. Capable of being removed?—A. Yes, sir.

Q. What did you do about the engineers?—A. I instructed the engineers how and when to start their lubricator and how much oil to feed.

Q. How did you get at the engineers to give them this instruction?—A. By sometimes riding with them; sometimes meeting them in the roundhouse.

Q. What has been the fact about cooperation between the management of the railroad and yourself there on the Louisville & Nashville? Have you had cooperation?—A. Yes, sir.

Q. Since you went on the Louisville & Nashville road as expert for the Galena Company has there been any change in the locomotive equipment?—A. Yes, sir.

Q. State what.—A. There have been added, as nearly as I recollect, pretty close to 200 heavy freight engines to the service; I would say probably over 150, anyway, heavy freight engines to the service.

Q. Have they taken the place of other smaller engines?—A. To a certain extent; yes.

7875 Q. What is the difference in the weight of these new engines and the old ones?—A. Well, the lighter engines would weigh about 30 tons, and I think the weight of the last engines was 90 tons.

Cross-examination by Mr. KELLOGG:

Q. It is a perfectly easy matter for the railroad company to state exactly the number of engines it had and the increase in weight, isn't it?—A. I would say yes.

Q. They have records showing that?—A. I would say yes.

Q. There has been no disposition for the Louisville & Nashville to keep anything back from you at all, has there?—A. Not that I know anything about.

Q. You could have got exactly the increase in weight, couldn't you, if you had asked for it?—A. I expect very likely I could.

Q. That would be a good deal better than your guess, wouldn't it?—A. I don't think it would.

Q. You don't think it would?—A. No; not very much.

Q. You think you can guess at it just as well as the exact figures?—A. Because I know what the figures were; I heard of it.

Q. What was the average weight of all locomotives on the road during the New York Lubricating contract?—A. I don't know.

Q. How many locomotives were put on during their contract?—A. I don't know.

Q. What was the aggregate weight of all the locomotives on the road during the Galena contract?—A. I don't know.

Q. What was the average weight?—A. I don't know.

7876 Q. You don't know anything about it, do you?—A. No, sir; I don't.

Mr. CRAWFORD. He has not testified as to those points at all.

Q. You don't know how much the average increase was, do you?—A. No, sir.

Q. You don't know whether the Louisville & Nashville got more new engines during the time of the Galena's contract than they did during the time of the New York Lubricating contract?—A. I don't know.

Q. Now, you spoke about the method of packing the boxes of engines. That method was in existence when you went there, wasn't it, on the road?—A. It wasn't being followed out.

Q. You say they didn't pack the boxes the way you testified, when you went there?—A. That is what I said.

Q. You say they didn't?—A. Yes, sir.

Q. And you inaugurated that system, did you, of packing boxes?—A. To a certain extent; yes.

Q. To what extent?—A. To the extent of where I found that they were not doing it, I had them do it.

Q. Now, to what extent was that?—A. Well, practically all.

Q. Practically all?—A. Yes, sir.

Q. What system did they have in existence when you went there?—A. To a great extent they were just simply putting waste in the bucket and pouring oil on it and packing brasses.

Q. They didn't soak the waste for a period before they used it?—A. No, sir; for the reason that they said that their oil
7877 wouldn't saturate through the waste, but had to be worked through the waste in their hands.

Q. Isn't it a fact that when you went there, every particle of waste all over the line was being soaked with oil, and you know it?—A. I tell you it was no such thing, and it was not.

Q. Isn't it a fact that the plan that you testified they use had been in existence for a long time on the Louisville & Nashville?—A. It had been in existence; yes, sir.

Q. And was in existence before the New York Lubricating contract was made?—A. Yes, sir; I believe it was.

Q. And during the time the New York Lubricating contract was in existence?—A. I am telling you what I saw when I went to the Louisville & Nashville Railroad.

Q. Now, how many buckets did you see with waste being put into them?—A. I saw it not once but a hundred times, and more than that.

Q. When you went there?—A. Yes, sir.

Q. So it was almost in universal use over the system, that they simply dumped the waste into the box?—A. Yes, sir.

Q. And they didn't saturate it for twenty-four hours or any length of time before?—A. Yes, sir.

Q. That was the universal custom over the line?—A. That was the universal custom; yes, sir.

Q. And that was the custom, was it, recommended by the New York Lubricating Company?—A. I don't know anything about that, sir.

Q. You don't know anything about that?—A. No, sir.

Q. Now, how were they packing the boxes when you went
7878 there?—A. Just taking and ramming it in, any way at all to get it in.

Q. No system about it at all?—A. No, sir; there was no system.

Q. That was universal all over the line, was it?—A. Yes, sir; practically speaking.

Q. The Louisville & Nashville Railroad has about 5,000 miles, hasn't it?—A. Somewhere in that neighborhood; yes.

Q. In how many places do they lubricate their cars and engines?—A. I couldn't tell you offhand. I should say between 15 and 20 points.

Q. So you are able to get around at once to 15 or 20 points and know the condition of how they were lubricating their cars and engines at the close of the New York Lubricating contract, are you?—A. Yes, sir.

Q. Now, how many more roads did you have besides the Louisville & Nashville at that time?—A. At that time I had no road, only the Louisville & Nashville.

Q. When did you get the Nashville, Chattanooga & St. Louis?—A. If my memory serves me right, in February, 1906.

Q. When did you get the Virginia & Southwestern?—A. Later on; I couldn't say just when it was now.

Q. You say that, owing to the fact that they had to ship their oils from New York, the New York Lubricating Company had a large stock on hand when their contract expired?—A. Yes, sir.

Q. Where do you ship yours from?—A. We ship it from Franklin to Louisville.

Q. How far is that?—A. From Franklin to Louisville?

Q. Yes.—A. Well, I couldn't say. The oil is kept in stock in Louisville and distributed from there over the Louisville & Nashville system.

7879 Q. Didn't the New York Lubricating Company keep their oil there in stock?—A. Yes, sir.

Q. And they distributed it over the L. & N. line?—A. Yes, sir.

Q. Then, what is the difference between that company and yours?—A. Because theirs was shipped in barrels and ours is shipped there in tanks and rebarreled in Louisville and shipped over the Louisville & Nashville Railroad.

Q. Theirs was shipped in barrels and then shipped over, wasn't it?—A. Yes, sir; that is what I understood.

Q. Then, what difference does that make?—A. I don't know as it makes any particular difference.

Q. You didn't keep a record of the pair of hot boxes that were on there during the New York Lubricating contract, did you?—A. No, sir.

Q. You didn't keep any record of the service that they made during that time?—A. I kept no particular record. I was furnished each day with a daily train report which showed——

Q. You were not there during the New York Lubricating contract, were you?—A. No, sir.

Q. You don't know anything about their service, do you?—A. Not a thing; no, sir.

Q. Nor do you know about the sort of inspection they furnished?—A. Not a thing.

Q. Nor anything about the oils that were used, except what you found there when you went there?—A. That is all I know.

Q. After their contract expired?—A. Yes, sir.

7880 Q. You don't know how many miles they made per pint or how much oil they used?—A. I don't know anything about it.

Q. Or how they packed the boxes while they were running their contract?—A. No, sir.

Q. Do you know Mr. John F. Walsh, superintendent of motive power of the C. & O. Railroad?—A. I just met him once.

Q. Did you know him when he was an expert for the Galena-Signal Oil Company?—A. No, sir.

Q. Never did?—A. No, sir.

Q. Do you solicit any business for the Galena-Signal Oil Company?—A. No, sir.

Q. What?—A. Do I?

Q. Yes.—A. When it comes my way; yes, sir.

Q. Well, now, how? What do you do to solicit business? Do you send your orders in to the home office?—A. I don't know what you mean.

Q. You said if the business came your way you solicited it.—A. Yes, sir.

Q. Does any come your way?—A. Yes, sir.

Q. Do you get some business for them?—A. Yes.

Q. What kind of business?—A. Why, sell their oil wherever I get an opportunity.

Q. And do you solicit the business?—A. Why, certainly. If you had a railroad and I thought you wanted to buy oil, I would certainly be after it if I thought I could get it from you.

Q. But you are an expert, aren't you?—A. Yes, sir.

Q. Superintending the work?—A. Yes, sir.

7881 Q. During that time you are soliciting business also?—A. If it came my way; yes, sir.

Q. Well, do you do it?—A. Yes, sir; I told you I did.

Q. That is what I thought. Now, do you solicit illuminating oil business, too, signal oil?—A. Solicit that just as quick as I would the lubricating.

Q. Well, do you?—A. Yes, sir; if it came my way.

Q. And burning oils, also—other kinds of oil?—A. I don't know what you mean.

Q. Well, illuminating oils. Water White oil?—A. We don't furnish that at all, sir.

Q. You don't solicit any of that?—A. No, sir.

Q. How extensively have you solicited business for the Galena-Signal Oil Company?—A. Not extensively at all, sir; just a few small railroads.

Q. Well, what were they?—A. One of them was the Hand Lumber Company, at Mobile; they had a small railroad. Another one was the Louisville & Atlantic. Another one was the street railway line at Louisville.

Q. Any others?—A. I don't know; there may have been; I don't recall them.

Q. Did you ever see any representative of the Georgia Railroad Company?—A. No, sir.

Q. You don't remember any others that you have solicited?—A. No, sir.

Q. Did you get the contracts from these companies?—A. In some cases; yes.

Q. Did you get the street railway contract that you spoke
7882 of?—A. No, sir; we haven't got it yet, but we are in hopes that we will have.

Q. You are still working on it?—A. Yes, sir.

Q. Any other street railways that you have been trying to get?—A. Yes, sir.

Q. What are they?—A. That I have, did you say?

Q. Yes.—A. No, sir.

Q. Well, you travel on passes, do you?—A. Yes, sir.

Q. Issued by the railroad companies?—A. Yes, sir.

Q. While you are soliciting business?—A. No, sir.

Q. Oh, you don't?—A. No, sir.

Q. Do you pay your fare while you are soliciting business?—A. No, sir; I simply take anything like that up, just where I happen to be, if it comes that way.

Q. Then you do travel on passes when you are soliciting business, do you?—A. No, sir; because that is not my business, to solicit business.

Q. As you travel around these various places as an expert you solicit some business, do you?—A. Certainly, if it came my way, I would.

Q. And you travel on passes do you?—A. Yes, sir.

Q. Is that customary among the Signal Oil experts?—A. I don't know anything about it.

Q. Do you know of any others doing that?—A. I don't know anything about it.

Q. How long have you been an expert for them?—A. Three years last April.

Q. During all that time you have solicited business to a
7883 greater or less extent?—A. No; not during all that time.

Q. Now, this Mobile logging road, where did you go to get that?—A. The Mobile logging road made a request of the L. & N. to know where they were getting their lubricant, and what kind of lubricant they were using, and what kind of packing they were using.

Q. And you went down to see them?—A. No, sir. The L. & N. Railroad Company furnished them with two barrels of saturated waste and packing, which the master mechanic told me saved him

$50 a month on brass on his cars; and he wrote our company requesting them to send a representative there.

Q. And you went?—A. Yes, sir.

Q. And traveled on a pass when you went?—A. Yes, sir.

Q. Do you solicit business for the Franklin Manufacturing Company also?—A. No, sir.

Q. Have you ever secured any business for that company?—A. The Franklin Manufacturing Company?

Q. Yes, that sells waste.—A. I am sorry to say that I have not.

Q. You haven't?—A. No; I would like to, but I haven't.

Q. You have tried to, have you?—A. Yes, sir.

Q. But you haven't succeeded in doing it?—A. No.

Q. Have you solicited business for any other of the Standard Oil companies other than the Franklin and the Galena?—A. No, sir.

Q. You haven't?

7884 Mr. CRAWFORD. He just said he didn't solicit any for the Franklin. I object to the form of the question.

Mr. KELLOGG. I understood him to say so.

WITNESS. No, I said I would like to.

Q. Didn't you say you tried to get some business?—A. No. I said I would like to, but I didn't.

Redirect examination by Mr. CRAWFORD:

Q. Your travelling, primarily and chiefly, is done in connection with your work as an expert, is it not?—A. Yes, sir.

Q. And you use these passes in the travelling necessary in your work as an expert?—A. Yes, sir.

Q. What is the fact as to whether you are called upon by railroad people to go to different points on the L. & N., by the L. & N. people, I mean, with reference to lubricating difficulties?—A. I am quite frequently called on.

Q. Then is it true that a considerable part of your travel is due to calls which the L. & N. people make upon you?—A. To quite an extent; yes, sir.

Q. What portion of your time is taken up with this matter of soliciting business that you have spoken of?—A. Practically none. It is only just a question of where you would run across a man where you thought there might be something doing, why, you would take up the matter of lubrication with him; and, so far as the Louisville street railway is concerned, it is in my own home town.

Q. It is a very trifling matter, then, compared with your regular work as an expert?—A. Practically nothing; yes, sir.

7885 By Mr. KELLOGG:

Q. You have an organization in your Signal experts for marketing supplies, haven't you?—A. I don't know what you mean, Mr. Kellogg.

Q. Do you know the Elvin Lubricator?—A. Yes, sir.

Q. What company is that manufactured by?—A. It is manufactured, as I understand, by the Franklin Supply Company, so far as I know.

Q. Isn't it sold by the Galena-Signal Oil Company?—A. Not that I know anything about.

Q. Did you ever sell those lubricators?—A. No, sir; I never did.

Q. You never marketed any of those, or any other supplies?—A. No, sir.

Q. Have you any interest in the Franklin Supply Company?—A. No, sir.

By Mr. CRAWFORD:

Q. I understood you to say that when you went down to see about this—Mobile road, was it, that you got business of?—A. Yes, sir.

Q. That you travelled on a pass?—A. Yes, sir.

Q. Was that in connection with any work that you were doing as an expert?—A. Yes, sir. I was going to Mobile, anyway.

Q. Going there on your expert matters?—A. On my own business with the L. & N. Railroad; yes, sir. Simply called on those people.

Q. What do you mean by going on business with the L. & N. Railroad?—A. To look after matters pertaining to the lubrica-
7886 tion at Mobile, which is a division point on the L. & N. Railroad.

Q. Then you didn't make a special trip down there to see these people?—A. No, sir.

Q. You would have used a pass for the L. & N. Railroad business anyway?—A. Yes, sir.

By Mr. KELLOGG:

Q. You found it convenient to go down there at the same time, I suppose?—A. Well, it amounts to about 2 barrels a year, so I don't think it would be worth anybody's while going down there for it.

(At this point the hearing was adjourned, to be resumed at the same place at 10.30 a. m. Tuesday, June 30, 1908.)

7887 ROOM 722, CUSTOM-HOUSE, NEW YORK CITY,
Tuesday, June 30, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison, and Mr. J. Harwood Graves; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. F. L. Crawford, Mr. Douglas Campbell, and Mr. W. Cleveland Runyon.

CHARLES C. UPHAM, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Mr. Upham, where do you live?—A. New York; 412 West End avenue.

Q. What is your business?—A. I am an engineer by profession. I am manager of the New York Steam Company.

Q. How long has the New York Steam Company been in business in New York?—A. About 26 years.

Q. What is the field of its operations?—A. The steam is used for heating buildings, for operating machinery, etc.; power purposes.

Q. In what territory?—A. There are two district in the
7888 city. One is on Fifth avenue. The pipes are principally on Fifth avenue, from 49th to 70th streets and cross streets. There are about 700 houses, residences generally, there heated. Down town there is a plant at Greenwich and Washington streets that supplies steam to about 400 buildings around here. I think the steam comes in this building; no, it doesn't come in this building, it comes in the old custom-house—this is the new building.

Q. Then, the operations of your company are confined to Manhattan Borough, are they?—A. Yes.

Q. And your business is that of furnishing steam——A. For all purposes.

Q. How is it conveyed to the buildings where it is used?—A. Conveyed through mains in the streets, the mains being in size from 6 inches to 24 inches.

Q. Similar to gas and water pipes, are they?—A. Very similar.

Q. With lateral connections——A. To the houses.

Q. With the houses or the business buildings where the steam is used?—A. Yes.

Q. And there introduced through a radiator system, I suppose, or some other system——A. Indirect heating, or—I don't know how this building is heated; but the ordinary methods; sometimes by indirect heating, where the coils are in the basement; sometimes by radiators, where the radiators are scattered through the building.

7889 Q. Is it your custom to make contracts with your customers?—A. Yes.

Q. Have you forms of the contracts which your company uses? If so, will you produce them?—A. I have two forms.

Q. Please produce them.

(Papers were produced by the witness and marked, respectively, "Defendants' Exhibits 80 and 81.")

Q. I show you Defendants' Exhibit 80. How long has that form of contract, or a contract substantially in that form, been used by the New York Steam Company?—A. About 15 or 20 years.

Q. I notice this language in Defendants' Exhibit 80: "We propose to furnish steam to ——— for the heating season of 1907–1908;" then, omitting some matter, "price $300, payable $150 December 1, 1907, and $150 February 1, 1908." Does that mean that you charge the customer who enters into this contract with you a definite fixed price for the service of steam for a year?—A. No; during the heating season, from October 1 until June.

Q. Well, during the heating season?—A. Yes.

Q. At any rate, whatever the period mentioned in the contract is, you charge the customer a definite price?—A. A definite price.

Q. In this case, $300. What character of property do you use this contract with?—A. Residences, principally.

7890 Q. Do you, or do you not, where this contract is used, measure the amount of steam that the customer takes?—A. Not in each house; no.

Mr. KELLOGG. I can't see the slightest materiality to this testimony, and I object to it on that ground. I supposed this was a lubricating contract.

Mr. CRAWFORD. I offer Defendants' Exhibit 80 in evidence.

The EXAMINER. Do you think it would be useful to the court to state at this point the purpose of offering the testimony?

Mr. KELLOGG. I object to the testimony as irrelevant and immaterial.

Q. What has been your experience with regard to whether different customers use the same or a different amount of steam under this contract?—A. I don't suppose consumers would ever use exactly the same amount of steam—any two.

Q. If the customer uses more than the average amount, I suppose that is your loss, is it?—A. These contracts are based on the average consumption, and if the consumer uses more than the average, that is our loss, yes; the price is not high enough.

Q. What is the fact about the difference in season? Is there any difference in the amount of steam used in different seasons—a cold season, for example, or a warm season?—A. Oh, yes; perhaps 25 per cent more sometimes. The consumption depends on the temperature altogether.

Q. In a very cold winter, if an unusual amount of steam is used, I suppose that is to the loss of the steam company?—A. Yes.

Q. And on the other hand, if a very moderate amount of steam is used, because the winter is mild, that is to the advantage

7891 of the steam company?—A. Yes.

Q. But the price is the same after it is once fixed by the contract, is it?—A. Yes; no chance to vary it afterwards.

Q. I show you defendants' Exhibit 81. Will you please explain how, if at all, this form of contract differs from the other in its main provisions?—A. This form is used by the larger consumers, and is used principally where steam is supplied for all sorts of purposes, including heating and machinery. This particular one is for the New York Clearing House, and operates hydraulic elevators, heating systems, house pumps, electric-light plant, ventilators, and so on. In this form we name a price that we think is approximately correct; then we say "We will furnish so much steam for so much money during the year." This is a yearly contract. If the consumer by any sort of economy can reduce the quantity consumed in thousands of pounds, we make a rebate to him at the end of the season. So, if he is careful in the use of steam, he gets back some of the money that he contracts to pay us.

Q. Suppose he uses more steam than the amount which you estimate the first of the season?—A. That is our loss again.

Q. In other words, the total cost to the consumer is fixed and cannot rise above a certain point?—A. Yes. He doesn't pay any more than the stated amount, no matter how much he uses.

Q. But if he saves and goes under the estimated amount, he may receive——A. He may receive several hundred dollars back on such a contract as that.

Q. And how is the settlement made for that rebate?—
7892 A. It is made by a meter. There is a meter that measures——

Q. No; not how it is ascertained, but how is the settlement made?—A. We send him a check.

Q. When?—A. At the end of the contract, whenever we find out what he has used.

Q. In the first instance he pays you the full price mentioned in the contract?—A. Yes; pays the full price, month by month.

Mr. CRAWFORD. I offer in evidence Defendants' Exhibit 81.

Mr. MORRISON. That is objected to as immaterial and incompetent, and as throwing no light whatever on the issues in this case. We are not trying a steam case.

The EXAMINER. He is showing that other people pursued the same system.

Mr. CRAWFORD. You don't object, Mr. Morrison, as I understand, to these, because they are copies?

Mr. MORRISON. Oh, no. I assume you are offering them to show the form of the contract. My objection goes to the substance.

Q. How long, to your knowledge, has this second form of contract, Defendants' Exhibit 81, been used?—A. With that provision of rebate, it has been in use about seven years, I should say.

Q. That is used largely for business property, as I understand?—A. Yes; principally.

Q. And covers steam furnished not merely for heating purposes, but for power purposes?—A. Yes. It is principally used where both steam for heating and power purposes is in use, and it is
7893 hard to arrive at a price, with any other arrangement, that is fair to both parties.

Q. Under this form of contract also, however, do you or do you not measure the amount of steam that the customer uses?—A. Yes; we measure it with a meter.

Q. That is for——A. That is for the foundation of the contract.

Q. But notwithstanding that, if the amount used is in excess of the amount named in the contract, that is your loss and the customer doesn't pay above the maximum figure?—A. No; he pays the amount that is specified there.

Q. I notice in both of these contracts, Defendants' Exhibits 80 and 81, a clause as follows: "That the engineers, inspectors, and other employees of the steam company, upon showing authority shall, according to law, be at all times permitted to inspect the engines, pumps, traps, and other steam apparatus in use by the consumer, and

to take indicator cards or by other means get records of the steam used." What is done by your company in the carrying out of that provision?—A. We have inspectors going about all the time examining these plants that we contract to supply, and there are a number of inspectors. If they see that the machinery is not in good repair—that contract provides for keeping the machinery in good repair—if they find that it is not in good repair, the attention of the engineer is first called to it. If they neglect it still, I usually write
7894 them a letter, or the company writes them a letter, calling attention to that fact and insisting upon it in a little stronger terms. Finally, if nothing is done, we tell them that we will cancel the contract.

Q. Do these inspectors direct their attention at all to the matter of economy in the use of steam?—A. Oh, yes.

Q. And do they give instructions to employes with that in view?—A. Yes. We don't assume charge of the plant, you know; we don't actually assume charge and responsibility for instructing the engineers, but our engineers that we have, or inspectors, are competent men who have been in the business a good while, and if they can give them any points about the operation of the machinery, they tell them.

Mr. CRAWFORD. The object of offering Defendants' Exhibits 80 and 81 is, to show that contracts of the general form employed by the Galena-Signal Oil Company are common in other forms of business, and that the use of a contract in which the cost to the customer is limited by an absolute guaranty, whatever amount is furnished of the article sold, is a common and recognized form of business contract, and that the making the unit of service the basis of a contract, instead of the unit of commodity delivered under the service, is a well-recognized and long-established usage in other and entirely reputable lines of business.

Mr. MORRISON. That statement is to show what you offer this testimony for?

Mr. CRAWFORD. Yes. Of course that is not evidence.

(No cross-examination.)

7895 WILLIAM R. KING, recalled on behalf of the defendants, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is your full name?—A. William R. King.

Q. You are the same William R. King who has heretofore testified in this case as a witness for the Government, I think?—A. I am.

Q. Where do you live?—A. 69 West 94th, New York City.

Q. And you are employed by the Standard Oil Company of New York?—A. Yes, sir.

Q. In what capacity?—A. Agent of refined oil and naphthas.

Q. Located where?—A. 26 Broadway.

Q. Are you the general sales agent of that company?—A. Yes, sir.

Q. How long have you been connected with the Standard Oil Company, of New York?—A. Since 1883.

Q. Are there different selling departments of the Standard of New York?—A. Yes, sir.

Q. What are those different departments?—A. The Boston department, the Providence department, New York City department, Albany department, Elmira division, and Buffalo division.

Q. What comprises the Boston department?—A. The Boston department operates in the larger portion of Massachusetts, the
7896 whole of Maine, the larger proportion of New Hampshire, and part of Vermont.

Q. And the Providence department?—A. Rhode Island, the western part of Massachusetts, a small portion of New Hampshire, the whole of Connecticut, and a small portion of Vermont.

Q. What does the Albany department consist of?—A. The Albany department has the State of New York north of Poughkeepsie, up to the Canadian border, and runs out about two-thirds of the State west.

Q. Entirely within the State of New York?—A. Entirely within the State of New York, with one exception—a small portion of Vermont.

Q. And the Elmira division?—A. The Elmira division is situated just west of where the Albany division leaves off; a small district just this side of the Buffalo division.

Q. What does the Buffalo division cover?—A. The Buffalo division takes the western part of New York, just where the Elmira leaves off.

Q. And the New York City department?—A. The New York City department comprises Greater New York, and goes up the State to Poughkeepsie, including Long Island.

Q. You are the general sales agent of the New York company in charge of these various divisions, are you?—A. Yes, sir.

Q. Who is the next general officer under you?—A. We have a manager in each of these departments—the head of each of these departments.

Q. Each one of these different departments that you have
7897 described in turn has a general manager, has it?—A. A general manager, except the New York City department, of which I am the general manager as well as the agent.

Q. Now, can you describe the duties of these general managers of these different divisions?—A. Yes. They have charge of all the substations, control of the selling of all the men, and everything that we use in our merchandising divisions in those departments.

Q. That is, they have general charge——A. General charge.

Q. Of the conduct of the business in their respective departments?—A. Yes, sir.

Q. You have what are called plants scattered throughout these various divisions, have you not?—A. Yes, sir.

Q. What do you mean by a plant?—A. A main plant has a large number of storage tanks, warehouse for storage of barreled oil, cases, and packages; a barreling plant; stables for our horses, and various machinery for pumping purposes, etc.; and at a great many points—

most every point—we have sidetracks in. In some places we have arranged for receiving oils in bulk boats. At those plants we most always have a sidetrack as well as the bulk boats.

Q. The main plant is a distributing centre for about how much territory?—A. That varies very much.

Q. From what to what, would you say?—A. I could hardly answer that unless I give a better description. We have other stations, substations to these main plants.

7898 Q. Yes; I will get to that in just a minute. What is there at the main plant?—A. Well, we have the main plant, we have the larger storage at the main plant, and in a good many places we have these goods stored there, and we send these goods out either by tank cars to various substations or deliver by tank wagon or barrel truck or wagon, or something of that description.

Q. How do you store the oil at these main stations?—A. In large iron storage tanks.

Q. And, generally speaking, of what size are those tanks?—A. They vary. They vary from 200 barrels to 20,000 barrels.

Q. Then this main station supplies the substations with a certain radius of the main station, does it?—A. Within a certain radius; yes.

Q. And that radius is what, on an average?—A. I should say 20 to 50 miles. It may vary.

Q. Have you any official in charge of the main station? If so, what is he called?—A. He is called the manager.

Q. The manager of the main station?—A. Of the main station.

Q. In a general way, what are his duties?—A. I think I described those to you before. He has complete control of all the selling and all the physical conditions of those stations in every possible way.

Q. Can you give us an idea, considering now only your territory, about how many substations there are connected with each main station?—A. No; I can't give you any correct idea. I can give you an idea how many main and substations we have in the

7899 Standard of New York.

Q. Where are the respective officers' headquarters for the various departments or divisions that you have mentioned?—A. For the Boston department, at Boston; for the Providence department, at Providence; for the Albany department, at Albany; for the New York City department, at New York City; for the Elmira department, at Elmira; for the Buffalo division, at Buffalo.

Q. And the offices of these general managers are located, I suppose, at those respective points?—A. The manager; yes.

Q. Now, the main station that I speak of is not necessarily located at these five or six points, is it?—A. No; we have separate stations which we may call main substations.

Q. Yes; that is what I am getting at. Take the Boston department, for example. In the Boston department there are many main stations, are there not?—A. Many main substations; yes, sir.

Q. At the head of each of these main substations there is a special agent, is there not?—A. Yes, sir.

Q. And it is those main stations, as I understand you, each of which covers a territory of from 20 to 50 miles?—A. Yes, sir.

Q. And has, within that radius of 20 to 50 miles, a great many substations?—A. Quite a number.

7900 Q. Depending upon the population of that particular territory, I suppose?—A. Yes, sir.

Q. Who is in charge of each of these substations?—A. The sub main stations? A special agent?

Q. No, sir.—A. All the stations that report to the main substations?

Q. Yes, sir.—A. There is a special agent in charge of those, who reports to the sub main station—special agent who has control of those.

Q. So, beginning at the bottom, you have a substation; that is the last division, is it not?—A. No; there is really another division, a relay to the substations.

Q. Tell me about that.—A. Sometimes we have a substation and the tank-wagon driver, going 20 miles, by the time he would get to the end of that route his tank wagon would be empty, so we establish a storage tank there, usually without an agent, so that if the tank-wagon driver comes there empty he can fill his tank there and avoid going back empty, and possibly having customers run out of oil; he fills up at this relay station and delivers his goods until he gets back to his substation.

Q. Who is in charge of the relay stations?—A. The substation manager looks after that.

Q. Well, that is a storage tank, then?—A. A storage tank.

Q. That is under the direct supervision of the substation?—A. Yes, sir.

Q. Is that right?—A. That is right.

7901 Q. So, beginning at the bottom you have a substation, in charge of which there is a special substation agent?—A. Yes, sir.

Q. Then you have a main substation, in charge of which there is another special agent?—A. Yes, sir.

Q. That main substation taking in all of these substations that you speak of?—A. Yes, sir.

Q. Then in charge of these main substations is the manager, who is at the division headquarters?—A. Yes, sir.

Q. Is that right?—A. That is right.

Q. And then you, as the general manager of all, are the man to whom the agents at the main divisions report?—A. Yes, sir.

Q. How does the tank-wagon driver get oil from the relay station?—A. Usually we have a valve there which is locked, and he has a key to that valve, and he opens the valve and lets the oil run into his tank, usually by gravity; sometimes he has to pump it.

Q. Now, will you describe a main station?—A. You mean the station where the manager of the division is?

Q. No, sir; the main substation.—A. The main substation has several storage tanks, varying in capacity from 200 perhaps to 2,000.

They have a stable, a wagon shed, and, in some cases, a pump for pumping purposes where we can't do it by gravity—which we always do if it is possible to take from the tank car by gravity, and also the tank wagon by gravity, too, for economy purposes. They have sometimes a storage warehouse for storage of barreled goods, or
7902 cans; some of them have can fillers and all the appliances necessary for delivering the goods.

Q. As I understand you, a main substation differs from a substation only in size.—A. That is about all.

Q. And at the main substation the manager for that particular substation territory is located?—A. Yes.

Q. About how many tank wagons, on average, travel out of the main substations?—A. That depends upon the condition of the business, the facilities, etc. They differ very materially.

Q. And is that also true with respect to the tank wagons that travel from the substations?—A. Oh, yes. In some of the thinly settled districts they only require one, perhaps two; other stations will require four or five.

Q. How are these substations usually supplied with oil?—A. Sometimes from the main head station and sometimes——

Q. And how?—A. By tank car usually. There are a few instances where we supply them by our bulk barges when they are situated on the water.

Q. Throughout this territory have you any great storage stations?—A. Yes, sir.

Q. Where are they located?—A. In Boston, Providence, and Wilson Point; those are the largest.

Q. Is Wilson Point a water point?—A. Yes, sir.

Q. Where is that?—A. It is situated in Connecticut, south of Norwood, just outside of Norwood.

7903 Q. How is the oil gotten to those points?—A. By one of our bulk barges.

Q. Is Albany also a large storage center?—A. Yes, sir.

Q. About what is your storage capacity at Albany?—A. Between 29,000 and 30,000 barrels.

Q. How many main substations and substations have you in your territory?—A. I believe there are 498 main and subs altogether.

Q. And do you know how many main substations there are of that 498?—A. No; I couldn't really tell you without looking up the matter.

Q. Can you approximate it?—A. No; I could not.

Q. Would it be half or a quarter or a third?—A. Oh, it wouldn't be a sixth. Of course each main substation has four or five or six stations reporting to it, and sometimes three or four, and really it would not be more than one-sixth of it I should judge.

Q. So that out of the 498 stations there may be 75 or 80 of them main substations?—A. Possibly.

Q. Now, out of these 498 stations, how many tank wagons and tank sleds do you run?—A. I think about thirteen hundred and some odd.

Q. In the winter time you run a tank sled?—A. At some points. I am not exactly certain of those figures; they are somewhat near them.

7904 Q. And how many men are there on each tank wagon or tank sled?—A. Usually one, unless there is something extraordinary.

Q. What do you mean by a barrel truck?—A. It is a truck we carried barreled goods on.

Q. How many barrel trucks have you in your territory?—A. I really couldn't tell you without referring to some of our memorandum reports.

Q. I have a memorandum here stating you have 169.—A. That is about it.

Q. And in addition to the tank wagons and barrel trucks, have you also delivery wagons for cans and packages?—A. Yes; I think we have about 148; somewheres around there.

Q. 158 my memorandum says.—A. 158? Well, that is about right.

Q. How many horses does it require to haul these wagons?—A. I think about 1,500; somewhere about that. I might say, in addition to that, you know, that at quite a number of stations we run on commission, where the man furnishes the horses, in addition to those.

Q. How many drivers are there in the employ of the Standard Oil Company of New York driving these tank wagons?—A. I think there are about 800.

Q. 813 is my memorandum.—A. Well, somewhere around there; about 813.

Q. You may refer to that memorandum. [Handing paper to witness.]

Q. What is the total number of your employees in these various stations and substations in your territory, for the year, say,

7905 1907?—A. I couldn't give you that without looking at the memorandum. [After referring to memorandum.] Total number employed, 1,638. That does not include the employees at 26 Broadway connected with the Standard Oil Company of New York; this is only the field interests.

Q. What is the amount of your pay roll, so far as your field men are concerned?—A. During the year 1907 it was $1,315,279.88.

Q. Have you also the figures showing the total amount invested in plants and stable equipment throughout your territory?—A. (After referring to memorandum.) $3,249,685.22, on March 31, 1908.

Q. That only includes your field investment?—A. That is all.

Q. Generally speaking, how thoroughly is this territory that you have described covered by stations or substations?—A. Almost entirely.

Q. You attempt to reach every community that you can, within your territory, do you?—A. Every possible community in our territory we endeavor to reach with tank wagon.

Q. Can you give us some idea of how much territory a given tank wagon will cover? I suppose that differs widely, does it not?—A. Oh, very widely. In a city it will cover a small portion of territory. Where they have to drive out of town, in country territory, possibly they would go as far as 20 miles, rarely further than that; we try to avoid going any further than that.

7906 Q. That is, in some of the scattered rural communities a tank wagon may cover a territory having a radius of 20 miles?—A. Yes.

Q. And have you any rule with respect to the length of time that you store your oil at these substations?—A. I hardly understand that question, Mr. Rosenthal. Do you want to know what amount of stock will last a given length of time?

Q. Yes, sir.—A. We expect to have a stock that will last at least 30 days.

Q. Now, I would like to have you describe in detail the method of distributing oil by tank wagons at these various stations to your customers.—A. The tank-wagon driver drives to his filling or storage tank. The oil is accurately measured into his tank wagon. He then proceeds to the first store on his route, ascertains how much oil they may need; after that he goes to his tank; he fills it in five-gallon tank-wagon measures; he carries that into the store and empties it, usually into a storage tank situated usually in the back of the store. After he has given them the number of gallons they require his rule is to collect cash for same. He proceeds on until his wagon is exhausted or he has furnished all the customers that require oil. In some cases he then returns to the storage tank and takes another load and follows the same procedure. Occasionally, where there are large tanks, where they in a few cases take a large quantity, he delivers it by hose, and then the storage tank in the store is accurately gauged—that is, he notices the actual quantity in it before and after he gets through filling, so as to determine exactly the amount of oil they fill into these storage tanks.

7907 Q. Does the driver in many instances collect for the oil delivered, and is he paid in cash?—A. Almost invariably.

Q. This tank-wagon driver, in addition to selling to the stores, does he sell to the private customer?—A. No, sir.

Q. That is, the tank-wagon dealer who sells to stores never sells to the consumer?—A. Never, unless it is a large manufacturing plant, etc., taking a large quantity, but not to an actual consumer or householder.

Q. What are the tank-wagon driver's duties, so far as making customers or selling oil is concerned, on his route?—A. He solicits new trade. Wherever he sees a store that would sell oil he goes in there and endeavors to obtain the trade.

Q. So that the tank-wagon man is not only a deliverer of oil, but he is your seller of oil?—A. Yes, sir.

Q. And one of his principal duties, as I understand it, is to solicit new trade and endeavor to get it?—A. Yes, sir.

Q. The Standard Oil Company does not, then, as I understand you, through its tank wagons, ever sell to the ordinary consumer of oil, the general consumer of oil?—A. No. There might be an exceptional case when somebody wanted a large quantity. But we very seldom sell to the general consumer, because it is contrary to our rules.

Q. Your business is done with the storekeepers?—A. With the storekeepers entirely.

Q. You also, in addition to selling from tank wagons, sell oil in bulk?—A. Yes.

7908 Q. Will you describe that, please?—A. The oil that is sold in bulk is mostly sold to peddlers who come to our plant for the oil, and once in a while to the United States Government in barges, for light-house purposes.

Q. What are these peddlers of oil?—A. These peddlers take the oil and sell it to the consumer or householder.

Q. And do they buy in as large quantities as does the storekeeper?—A. Oh, they buy in much larger quantities.

Q. That is, a peddler of oil is a larger customer than the storekeeper?—A. Much larger, as a rule. Of course there are some small peddlers, but, as a rule, the peddlers are large purchasers.

Q. They come right to the station?—A. In most every instance; there are a few exceptions.

Q. And get the oil themselves?—A. And get the oil themselves.

Q. And they have their own tank wagons?—A. Sometimes they have tank wagons, sometimes they have cans, sometimes they may have barrels, and they draw it out in these barrels.

Q. In addition to selling to the storekeepers and the peddlers, do you also sell oil in barrels?—A. Yes, sir.

Q. In what cases?—A. We sell to the railroads, sometimes to the large jobber, sometimes in isolated districts where they can not take a tank wagon, and in a few cases people desire to have it in barrels, but in very few cases.

Q. Now, that comprehends, as I understand it, your system of marketing your oil, does it not?—A. Yes; all except the

7909 can business.

Q. Tell me about that.—A. In a few of the large towns we have a peddling wagon and deliver to the consumer direct.

Q. In 1-gallon cans?—A. In 1-gallon cans.

Q. And where are those cans filled?—A. Those cans are filled at one of the stations from the storage tank or from the can filler, in which the oil is pumped from the storage tank, and then these cans are placed on the wagons and the drivers go off on their routes and sell this oil for cash. The cans, being the property of the Standard Oil Company, we simply loan them and expect them to be returned.

Q. Have you made up any figures showing the percentage of your total business that is done by your tank wagons?—A. Yes, sir.

Q. Can you state that percentage?—A. It is about 76 per cent; between 76 and 77 per cent.

Mr. MORRISON. Does that mean the domestic business?

WITNESS. Yes, sir.

Q. And about what percentage of the total business done in this territory is in barrels?—A. Little over 11 per cent.

Q. What percentage in bulk?—A. About 8 per cent, I think; between 8 and 9 per cent.

Q. And what percentage in cans direct to the consumer?—A. Between 4 and 5 per cent.

Q. How do these tank wagons differ in capacity?—A. Oh,
7910 they run from 250 or 300 gallons up to as high as 1,200 gallons capacity.

Q. Is there any advantage in delivering to a customer from tank wagons?—A. Very great advantage.

Q. Will you please state that?—A. First, he gets his exact measure; next, he avoids any contamination from soft glue in the barrel or from improper preparation. He can take as many gallons as he wishes to pay for, from 5 up. He never will run out of oil because the tank wagon driver watches him very closely (his tank), whereas if he got by the barrel he would have to take at least 50 or a multiple of 50, and very often he would run out, not being able to order in time. Another thing, in delivering in barrels, there is an element of danger in contaminating the goods in a man's store. Also there is a leakage and shrinkage in barrels. Sometimes that leakage will cover the floor for a distance all around, and there is an element of danger from fire in that way. And he is always sure of his exact measure.

Q. Those difficulties that you speak of are obviated, as I understand you, by the tank-wagon delivery?—A. Oh, yes.

Q. Does the company sell or furnish to storekeepers a storage tank?—A. Yes, we sell storage tanks at about cost so they can take advantage of an economical and much better delivery.

Q. Throughout your territory, Mr. King, in taking into consideration the 20-odd years that you have been connected with the New York Company, what do you say as to the general marketing policy
of your company in so far as it relates to the treatment of
7911 customers?—A. We instill into all our people that they must be courteous in every possible way, that they must do everything possible to gain the good will of the trade, must do anything, almost, that the trade asks them; and we endeavor to get the best class of men for that purpose, and have been very successful to have the good will of most of our customers; I would say of all of our customers, really.

Q. Suppose you have a complaint from a customer, what do you do?—A. We investigate it immediately. Sometimes we send hundreds of miles, at a great expense, to investigate that complaint, and almost invariably we are able to satisfy the customer in regard to it.

Q. You have how many men employed by the New York Company under your charge, did you say?—A. I think 1,600-odd men.

Q. And those men are employed on salaries, are they, and not on commission?—A. The majority of them are employed on a salary. There is a certain number on commission, a couple of hundred, I suppose, that deliver by tank wagon.

Q. From your long experience with the company, what do you say as to the length of service, generally, of these employees of the company?—A. During their lifetime they hardly ever leave us. None resign, and few die.

Mr. KELLOGG. Pretty healthy business if none die.

WITNESS. Very few, sir.

Q. In the treatment of your employees, have you what is known as a pension system?—A. Yes, sir.

7912 Q. What is that? Describe it briefly.—A. When a man arrives at the age of 60 and has been with the company for 20 years, he may apply to be retired. If so, he gets half of his average salary for the last ten years or the previous 10 years until he arrives at the age of 65, and from that on he gets 25 per cent of his salary.

Q. For the remainder of his life?—A. For the remainder of his life. A man at the age of 65 who has been with the company 20 years may apply, or the company may retire him on 25 per cent of his average salary for the last ten years, for the remainder of his life.

Q. Have you observed in your experience during your connection with this company any improvements which the company has introduced in connection with the facilities for handling and selling oil, any improvements in the way of consuming devices?—A. Oh, yes.

Q. Will you please tell us about that.—A. In our tank-wagon system first.

Q. Was the tank-wagon system introduced by the Standard Oil Company?—A. We so claim. And then we endeavor to increase the consumption of oil in every possible way. For that purpose we sell a lot of oil-consuming devices at about cost, such as lamps, stoves, and heaters. We endeavor to put them out to the public so that they can have an economical way of illumination, cooking, and heating, that would cost them much less than for coal, gas, or electricity. Great quantities of those have been sold. We have spent a lot of money in advertising those things.

7913 Q. These various devices, such as stoves and heaters and lamps, which you spoke of, how do they affect the consumption of oil?—A. They increase it very materially.

Q. In what way?—A. The consumption is very great. We have figured (I don't know whether it is exactly so) that a stove or a heater will probably consume from 1 to 2 barrels of oil per year, each stove or heater.

Q. And these stoves and heaters and improved lamps have been introduced, as I understand you, by the Standard Oil Company for

the purpose, partially, of increasing the sale and use of oil?—A. Yes, sir.

Q. And in that way they have succeeded in accomplishing that result?—A. Yes, sir.

Q. Now, throughout this territory in which the Standard of New York operates, I suppose there are other people who are dealing in oil?—A. Yes; quite a number.

Q. I don't suppose you have any idea of the exact number?—A. No; there are so many of them. Of course I know quite a number of them.

Q. Generally speaking, throughout every portion of this territory, are there other people who are competing with you in the sale of oil?—A. At almost every point.

Q. And in your twenty-odd years of experience have you ever known one of your competitors opening up any new territory, into which you have gone, following your competitor, and cutting prices?—A. Never. I never knew of a place we hadn't been in before the other party.

7914 Q. You never knew of a place in your 20-odd years of experience where you were not there before the other party?—A. No, sir.

Q. What instructions, if any, do you give to your employees, tank-wagon drivers, with respect to your competitor's wares, or with respect to the competitor himself?—A. We tell them never to run down the competitor or his wares, but to depend upon the quality of the goods we sell.

Q. Have you given such instructions yourself?—A. Yes, sir.

Q. And is that your general policy throughout the entire New York territory?—A. Yes, sir.

Q. What is your policy, if any, in regard to hiring away from your competitors their employees?—A. We never do it.

Q. Now, you say that in your 20-odd years of experience you have never known a case where the Standard was not in the field first, followed by some competitor?—A. Yes, sir.

Q. What do you say as to whether or not the competitor, after he has followed you into a given field, has cut the prices in order to get trade?—A. Invariably they do so.

Q. Isn't it a fact, Mr. King, that invariably the Standard Oil Company, being in the field first, the competitor has come in, and in order to get a foothold and get business, in the first instance it is the competitor who, in every instance, practically, has cut the price first?

Mr. KELLOGG. I object to that as leading. If you want to testify, Mr. Rosenthal, you had better go on the stand yourself.

7915 Q. What do you say?—A. I say that the other party has invariably cut our price when they come into our territory where we have been established. I think I answered that in my former answer.

Q. The quality of the oil being substantially the same, if you please, the character of the service being substantially the same, that would be about the only way that the competitor could get in on business in the first instance, wouldn't it?—A. Yes, sir.

Q. When this competitor has cut the prices, coming into territory where you have been in the habit of selling your oil, what, as a general rule, has been your practice in so far as meeting those prices is concerned?—A. We usually have our people go and see our customers and try to explain to them our facilities for furnishing them the goods and how well we have taken care of them, never letting them run out of oil; that really, in the long run, it is just as well for them to stay with us even if our price is a little higher than the other party's. Failing in this, we sometimes lower our price—not always—to what the outsider has offered, or the other party has offered, and sometimes we have to lower to what he offers.

Q. In order to hold the business which you theretofore had?—A. In order to endeavor to hold the business.

Q. Where do you get your information from about your competitors cutting prices?—A. I usually get it from the manager of the department.

7916 Q. And how does it get to him?—A. From one of the substation managers.

Q. How does it get to the substation manager?—A. The substation manager has either seen an invoice or has been so advised by some customer whom he can depend upon, or he has lost his trade and the customer has advised him in many cases that he is able to buy for less. He reports that to his substation manager, and the substation manager reports it to the main-station manager, and it gets to the department manager.

Q. Who is it, then, that authorizes the cut to meet the competitor's cut?—A. If the manager of the department is fully convinced of that he usually comes in to see me or writes to me, giving me these facts, and, after looking into the facts very closely and being convinced of their truth, in some cases we authorize him to make a reduction.

Q. You say, "we." Who is "we?"—A. Myself.

Q. You? You are the man who finally passes upon that question?—A. Yes, sir.

Q. And ultimately, then, all those questions get to you?—A. As a rule.

Q. I suppose it sometimes happens that the men in the field, and under the stress of a given situation, will themselves cut the prices, will they not?—A. Yes; in some rare instances.

Q. Without putting it up to the general manager?—A. Yes, sir.

Q. Have you adopted any policy in your territory with respect to satisfying yourself of the cut in prices made by your com-

7917 petitor before any cut will be authorized by the Standard?—

A. Usually, when I am advised of a cut being made by the other parties I ask them for an invoice, if possible, and in a great many cases they have produced the invoice showing the cut.

Q. What do you mean by the invoice?—A. The invoice given out by the other party who sells the goods at a cut price. And when I advise them that they can reduce the price I say to them, "You must have absolute proof that there has been a cut by other parties before you reduce your price, either by invoice or by information from some source that you can depend upon."

Q. During the time that you have been sales manager in your company have you ever initiated a reduction in price for the purpose of driving out of a given field one of your competitors?—A. No, sir. We treat those in each individual case.

Q. What do you mean by that?—A. Why, we had no rule to drive out competitors, we never initiated any rule.

Q. Have you ever started any reduction of price for that purpose?—A. Not to my recollection.

Q. Do you know of a single instance during the 20-odd years that you have been connected with the New York Company where a competitor has ceased doing business because of any reduction of price?—A. I do not. Most all of them have made money.

Q. They have made money and grown as you have grown?—A. So I have been informed.

Q. And observed?—A. And observed. Very prosperous
7918 some of them have got to be, owning yachts and Southern plantations, and things like that.

Q. In the territory around Albany and Troy, New York; Springfield and Worcester, Massachusetts; Hartford, Connecticut, say during the past five years, what other concerns besides the Standard Oil Company have been doing business?—A. Well, the Hisgen Brothers, or Four Brothers.

Q. Where are they?—A. They are at Albany. The Tiona Oil Company at Albany and Troy and, I believe, occasionally the American Oil Company has come along there. They are all over. And at Springfield we have had the Hisgens, Four Brothers; at Worcester, E. A. Buck & Company, the Waverly Oil Company; they are also at Hartford, and various other oil refiners from time to time.

Q. The Waverly Oil Company?—A. The Waverly Oil Company, as I understand, furnishes the tanks for various parties whom they advise to go into business and take oil by tank car.

Q. And are these various concerns that you have named still doing business in that territory?—A. Yes, sir.

Q. And have been, generally speaking, for how long?—A. The Valvolene Oil Company for many, many years; E. A. Buck & Company for a number of years, and the Hisgen Brothers, in refined oil business, I think since about 1900, somewhere around there; I couldn't say exactly.

Q. What has been your experience and observation with respect to these other people coming into your territory and cutting the prices until they get a certain amount of the business and, after having gotten it, raising their prices?—A. They do that in many instances.

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Q. Has that been generally done?—A. In a great many instances; I don't know whether generally, but in a great number of instances they have, after they have acquired a certain amount of trade.

Q. Does the Standard Oil Company of New York, in connection with these domestic sales, make contracts for future delivery?—A. We have to the United States Government.

Q. I mean aside from that.—A. Oh, it is not our policy at all to make any contract sales from tank-wagons. There may be an instance occasionally, but it is against our policy. It is usually a spot sale, our tank business.

Q. A spot cash sale?—A. A spot cash sale.

Q. Now, as I understand you, Mr. King, the refined oil which is sold in your territory in the first instance comes from the refinery and is sent by the refinery to these various storage stations?—A. Yes, sir.

Q. Scattered throughout the territory, as you have described it?—A. Yes, sir.

Q. And those stations usually contain oil sufficient in quantity to satisfy their wants for a period of approximately thirty days?—A. That is what we endeavor to have.

Q. And then, after the oil reaches these storage stations, it is distributed by tank wagons and sold in a few instances by barrel lots or in barrel lots in the way you have described heretofore to the local customers?—A. Yes, sir.

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Q. So that that portion of your business that you have to do with is entirely domestic business, is it not?—A. Entirely domestic, with one exception.

(A recess was here taken until 2 o'clock, at which time the direct examination was resumed.)

Q. I understood you to say this morning, Mr. King, that of the total sales of oil made in the territory of which you are general manager of the Standard Oil Company of New York, 76 and a fractional percentage was sold through tank wagons?—A. Yes, sir.

Q. Have you figured what proportion of that 76 per cent of refined oil sold through tank wagons is sold by or through tank wagons that pass from one State to another?—A. About 2.14 per cent.

Q. The remainder, approximately 74 per cent, of the refined oils sold through tank wagons and by tank wagons, then, is sold entirely within the respective States where it is sold?—A. And stored.

Q. Well, now, let us see. That is somewhat involved. As I understand, 76 per cent of all of the refined oil which is sold in your territory is sold through tank wagons?—A. Yes, sir.

Q. As I understand you, 2.14 per cent of the refined oil which you sell through tank wagons is oil which passes from one State to

another in the process of delivery from your tank wagons?—A. Yes, sir.

Q. So that 74 per cent, in round numbers, of all of the re-
7921 fined oil which you sell is sold through tank wagons within the States themselves?—A. Yes, sir.

Q. Where the oil is originally stored?—A. Yes, sir.

Q. Now, that 2.14 per cent, just what does that comprise; what does it cover?—A. It covers a few deliveries where the storage tank may be situated somewhere near the State line; in routes there may be a few customers over the State line, right close to the State line, that this tank wagon may serve.

Q. I understood you to say this morning, did I not, that these storage tanks are large tanks that, in the first instance, are filled with oil which comes from the refineries?—A. Yes, sir.

Q. And, as a rule, you get enough oil in those storage tanks to run along for thirty days, or thereabouts?—A. We endeavor to do so.

Q. You make no sales for future delivery, do you, to your customers when you sell from tank wagons?—A. When we sell from tank wagons, no, with possibly very few exceptions; they are infinitesimal, almost.

Q. Those sales are cash sales made from day to day?—A. Made from day to day.

Q. And, I suppose, differ from day to day?—A. Yes.

Q. And each sale is entirely complete in itself?—A. Yes.

Q. Your tank-wagon driver steps into a store and ascertains how much the storekeeper wants to buy?—A. Yes.

Q. And, having so ascertained, he goes to his tank wagon
7922 and draws his oil?—A. Yes.

Q. And then for the first time he knows how much oil he is going to sell to that storekeeper?—A. That is the only way he does know.

Q. Or how much the storekeeper wants to buy, if he wants to buy at all?—A. Yes, sir.

Q. And I suppose it frequently happens that the storekeeper does not buy at all?—A. Very often.

Q. I understood you to testify this morning that 8 per cent and a fraction of all the oil that you sold within your territory was sold in bulk?—A. Yes.

Q. And you explained what you meant by that?—A. Yes.

Q. Now, that bulk oil which is sold, what proportion of that, if any, is sold from one State to another?—A. None.

Q. That is, all of that oil is sold to the customer who comes right to the storage tank?—A. Yes.

Q. And buys?—A. Yes; with the possible exception of the Government. We deliver a boat load right here in this State.

Q. And taking the oil which is sold to the customer in cans, I understood you to say this morning that a little over 4 per cent of the total oil that you sold within your territory was sold in cans?—A. Yes.

Q. Direct to the consumer?—A. Yes.

Q. Of that 4 per cent and a fraction, how much is sold entirely within the State and how much passes in the sale from one State to another?—A. It is sold entirely within the State, all of that.

7923 Q. And do you mean by that within the State where the cans are filled?—A. Yes, sir.

Q. From the storage tank?—A. Yes, sir.

Q. And you also testified that 11 per cent and a fraction of all the oil that you sold was sold in barrels?—A. Yes, sir.

Q. What portion of that 11 per cent that is sold in barrels is sold entirely within a given State, and what portion of it in the course of the sale passes from one State to another?—A. About 3 per cent passes from one State to another; the balance is sold in the State.

Q. That is, about 3 per cent of that 10 per cent?—A. About 3 per cent of that 10 per cent.

Q. Where is the oil barreled—at the storage tank?—A. The oil is barreled at the storage tank where it is stored.

Q. So that all but about 3 per cent of the 10 per cent is sold within the State where the storage tank is?—A. Yes, sir.

Q. You mean by that, that 7 per cent of the 10 per cent is sold within the State and 3 of the 10 per cent is sold without the State?—A. Yes, sir; that is what I mean.

Q. Don't you mean that 3 per cent of the 10 per cent, or $\frac{3}{10}$ of 1 per cent, represents the extent of your barrel oil that passes from one State to another?—A. I believe it is 3 per cent of the total amount of oil sold in barrels; 3 per cent of it is sold in another State. That is what I mean.

Q. That is to say, 97 per cent of the total barrel sales is entirely within the State where the oil is barreled?—A. Yes. I am not

7924 quite certain about the figures, but it is very close to that.

Q. What do you mean by you are not quite certain about the figures?—A. I think it is 3 per cent, including the tank wagons and barrels, of the total sales that is sold in other States from where the oil is stored.

Q. Now, in addition to refined oil you also sell naphtha, do you not?—A. We do.

Q. And where do you get the naphtha from?—A. From the same source mostly that we get the oil from.

Q. From the refineries?—A. From the refineries.

Q. And how is that stored, if at all?—A. In storage tanks similar to the refined oil.

Q. In storage tanks located similarly to the refined oil tanks?—A. Yes.

Q. Now, to what class of people do you sell naphtha?—A. We sell it to manufacturers. They use it for manufacturing purposes, for rubber and various things. We sell it to people who use gasoline engines, to people who have automobiles and launches, and for cleaning purposes and various other purposes for which it is used.

Q. What is naphtha?—A. Naphtha is known sometimes as gasoline and sometimes as naphtha. It is much more volatile and of higher gravity than oil.

Q. It is an oil, however, is it not?—A. Well, it is taken from the crude; it is one of the products of the crude.

7925 Q. It is the first product in the refining process, is it not?—A. I am not familiar enough with the refining process to answer you that.

Q. But it is a liquid substance?—A. It is a liquid substance.

Q. Not a gas?—A. No; not a gas. The 88 and 90 almost becomes a gas, but it is a liquid.

Q. Of course, it is one of the products of petroleum?—A. Yes.

Q. That is evolved in the process of refining petroleum?—A. Yes.

Q. Now, what is your method of handling the naphtha, in selling it?—A. Somewhat similar to the selling of the refined oil.

Q. By tank wagons?—A. By tank wagons and in barrels.

Q. And in bulk?—A. And in bulk.

Q. What percentage of your total naphtha sales are by tank wagon?—A. About 40 per cent.

Q. And what percentage in bulk?—A. I don't remember exactly those figures.

Q. Is it 22 per cent?—A. Yes; it is about 22 per cent.

Q. And what proportion in barrels of the remainder?—A. About 38 per cent.

Q. Now, Mr. King, of the total sales of naphtha, whether by tank wagon, bulk, or barrel, what percentage is sold direct from the storage tanks; that is, drawn from the storage tanks to the tank

7926 wagons and thereafter sold to the purchaser from the tank wagons?—A. At all points, anywhere, you mean? I hardly understand that question.

Q. Within your territory.

(The question was read.)

A. I should judge thirty-odd per cent of it.

Q. You don't quite understand my question.—A. No; I don't really understand your question.

Q. Given all of your naphtha in a storage tank, what percentage of that is sold from the storage tank to the consumer?—A. To anyone?

Q. To the customer.—A. To the customer?

Q. Yes, sir.—A. You mean in the State?

Q. Yes, sir.—A. Where it is stored?

Q. Yes, sir.—A. Oh, about 92 per cent of it.

Q. About 92 per cent?—A. Yes. I didn't understand your question.

Q. And the other 8 per cent goes from the storage tank to the tank wagon or barrels and passes from one State to another in course of the sale?—A. Yes.

Cross-examination by Mr. KELLOGG:

Q. All of the oil that you sell in Maine is shipped there from out of the State, isn't it?—A. Yes.

Q. All of the oil you ship in Vermont, New Hampshire, Connecticut, Rhode Island, and Massachusetts is shipped into those States from outside of the States?—A. Yes.

Q. By your company?—A. Yes.

7927 Q. Yes; that is what I thought. Now, where do you ship the oil from which goes into the State of Maine?—A. From various points.

Q. Name them.—A. Sometimes from New York.

Q. From what refineries?—A. From the refineries in Brooklyn.

Q. Operated by what company?—A. Standard Oil Company of New York. Sometimes——

Q. What others?—A. Sometimes from the Standard Oil Company of New York refineries at Buffalo. Sometimes we purchase it from the Standard Oil Company of Bayonne. Sometimes we purchase it at Philadelphia.

Q. From the Atlantic Refining Company?—A. Yes. And sometimes we purchase at other points when we do not have a supply here.

Q. What other points?—A. Sometimes we purchase it from Cleveland, occasionally.

Q. Of the Standard Oil Company of Ohio?—A. Of Ohio; yes. And sometimes from Lima, Ohio.

Q. That is Standard Oil of Ohio, isn't it?—A. Yes.

Q. Now, that is also the case with the oil that goes into all of the other States within your territory, isn't it?—A. Getting it from these various points?

Q. Yes.—A. Yes.

Q. The oil that goes into these States, the bulk of it, comes from what point?—A. I couldn't exactly tell you that.

7928 Q. Well, you can give us some idea, can't you?—A. Oh, we get a large proportion from Bayonne, and we get a large proportion of it from Buffalo, wherever they have the oil.

Q. Take the New England States; take the States along the Atlantic coast—Maine, Massachusetts, New Hampshire, Connecticut, Rhode Island—where do you get the bulk of that oil?—A. I couldn't really say where we get the bulk of it.

Q. Oh, you must know where you get the bulk of it. You are in charge of the business, aren't you?—A. Yes. We buy it wherever they have the oil to sell.

Q. Is that the question I asked you?—A. No.

Q. Answer the question I asked you.—A. You asked me where we get the larger portion of it.

Q. Yes.—A. I don't know, really, where we get the largest portion of it.

Q. You can tell from your books, can't you?—A. I think so.

Q. I wish you would make up a statement, going back over the last three years, of which you have the complete statements, will you?—A. I will endeavor to.

Q. Showing where you get the oil and from what points it is shipped into each of the States. I don't know that I care to have

the States separated, but into your territory. If you will make that statement up, unless you can give us some opinion now upon that subject. Will you make up a statement?—A. Yes, sir.

Q. All right. The Standard Oil of New York owns and operates the refinery at Brooklyn, does it?—A. Yes; two of them.

Q. Any other place?—A. At Buffalo.

7929 Q. Any other place?—A. No. Two or three we have in Brooklyn.

Q. Now, isn't it a fact that the great bulk of the oil which you ship to the Atlantic coast States, in your territory, comes from the seacoast refineries, either the Atlantic refinery or the Bayonne or the Brooklyn, at least along the seacoast?—A. A large proportion of it does.

Q. Doesn't 90 per cent of it?—A. I couldn't say 90 per cent of it. It is a large proportion of it.

Q. A very large percentage?—A. I really couldn't say the percentage.

Q. More than 75 per cent?—A. Yes.

Q. You ship very little oil from Buffalo into the New England States other than Vermont, don't you, and perhaps western Massachusetts?—A. Well, sometimes it goes to New Hampshire.

Q. Very little?—A. Not a great quantity.

Q. Where does the crude oil come from, from which the oil is manufactured in these refineries?—A. I don't know.

Q. It isn't produced in the city of New York, is it?—A. I haven't seen any.

Q. You know from general knowledge of the business that it comes from western Pennsylvania and west of there, don't you, and New York?—A. I know where a great many of the crude fields are.

Q. Yes, and you know it comes from those crude fields?—A. I should judge so.

Q. And that is shipped into the State of New York, part of it, for manufacture, and part of it into New Jersey for manu-

7930 facture?—A. I suppose so. I don't know.

Q. Now, this oil that you ship from New York and other places into these States, of which you have charge, is shipped along the seacoast largely in steamships, is it not?—A. Yes.

Q. And landed at what places?—A. In Boston, Providence, Wilson Point, New Haven, New Bedford, Portland, Bangor, and quite a number of other points. I can't really just call them to mind.

Q. Albany? You ship up to Albany by river?—A. Very rarely.

Q. Where does the oil that is used in Albany come from, mostly?—A. That comes from some of the refineries, either Buffalo or some of the other refineries.

Q. Now, the Standard Oil Company of New York is the shipper of that oil, isn't it—pays the freight?—A. The Standard Oil of New York pays the freight.

Q. It accepts the oil at the refinery?—A. Yes.

Q. It ships it to these various points, what you call your main station and sub main stations and puts it in tanks?—A. Yes.

Q. Then it takes it out and ships it by tank wagon and otherwise to the trade?—A. Yes.

Q. What you mean is, that when the Standard Oil Company of New York gets it into the tank wagon that only 2.14 per cent of it crosses the State line, after it gets into the tank wagon;
7931 that is what you mean, isn't it?

Mr. ROSENTHAL. That is what he said.

WITNESS. That is what I said.

Q. Yes; that is what I understood you to say. But substantially all of it crosses the State line before it gets into the tank wagon?—A. Not according to my ideas; no.

Q. What?—A. Not according to my ideas.

Q. Not according to your ideas?—A. No.

Q. Oil that is shipped from New York Harbor to Maine crosses the State line, doesn't it?—A. It goes out in the ocean.

Q. Well, where does the State line end?—A. I don't know whether it commences in the ocean or not.

Q. Oil that is shipped from Buffalo over into Vermont and New Hampshire crosses the State line, doesn't it?—A. Yes.

Q. Who is your superior officer in the Standard Oil Company of New York?—A. John D. Archbold, vice-president.

Q. Who is the president?—A. William Rockefeller.

Q. Did I understand you to say this morning that you never cut prices below your competitors?—A. Yes, sir; I so stated.

Q. You know that of your own knowledge, do you?—A. To the best of my knowledge.

Q. To the best of your knowledge?—A. I couldn't say what some of the field men might have done without my knowledge.

Q. Now, you have a system of reports showing the price of oil in every town in your district, haven't you?—A. Yes.

Q. I show the petitioner's Exhibit 635, prepared by somebody in the Standard Oil departments, or compiled from the statements
7932 furnished by the Standard Oil Company——

Mr. ROSENTHAL. Compiled by Mr. Durand.

Mr. KELLOGG. Well, it is compiled from the exhibits in this case.

Mr. ROSENTHAL. That remains to be seen.

Q. By which it appears that during the year 1904, in every month but four, you were selling oil in Springfield, Massachusetts, at a loss. Do you know whether that is so or not?—A. I know nothing about it.

Q. You know nothing about it?—A. No, sir; I didn't have charge of it.

Q. When did you get charge of Springfield, Massachusetts?—A. 1906.

Q. All right, we will take 1906. What time in 1906 did you commence?—A. Somewhere the latter part of April.

Q. The latter part of 1906. Then it is not a fact you have had charge of this territory for twenty years?—A. Not the whole of it.

Q. Then you don't know what you have done as to your competitors in Springfield, Massachusetts, do you?—A. In the twenty years?

Q. Yes.—A. No, sir.

Q. You don't know anything before 1906?—A. Not before 1906; no.

Q. Did you take charge of the entire New England territory in 1906?—A. No.

Q. When did you take charge of this entire territory that
7933 you are talking about?—A. I took charge in 1906 of the entire territory.

Q. Prior to 1906 did you have charge of any part of the New England territory?—A. Boston.

Q. Just Boston?—A. Boston department.

Q. So you don't know what occurred in much of this territory prior to 1906?—A. Not very much.

Q. And your opinion as to whether your agents cut prices below competitors you get entirely from their reports; isn't that true?—A. Excepting the Boston department and New York City.

Q. Did you ever look up to see for how many years you were selling oil in Springfield, Massachusetts, at a loss?—A. I couldn't tell you.

Q. Did you make any money there during the first four months of 1906?—A. I couldn't tell you.

Q. Do you know at what price you sold oil there in 1906?—A. What time?

Q. In 1906 during any part of the year.—A. 7½ and 7 cents, I think it was.

Q. What were you charging Boston at the same time?—A. You mean what was the selling price in Boston?

Q. Yes.—A. 8½ and 9 cents.

Q. 9½ cents, wasn't it?—A. I don't know whether it was 9½ or not.

7934 Q. And as high as 11 cents a good deal of the year, didn't you?—A. Oh, I think not. There might have been some isolated places.

Q. As high as 10 cents, I should have said. I beg your pardon.—A. There might have been some isolated places in Boston as high as that.

Q. During the months of March, April, May, and June, didn't you sell at about 10 cents in Boston?—A. I couldn't say that. I think it was nearer 9.

Q. Can you give any reason why you should sell at 7½ in Springfield and 9 and 10 in Boston?—A. Yes.

Q. Why?—A. Other parties offered it for a less price in Springfield.

Q. Were you not, during some of that time, selling away below what other parties were selling at?—A. I don't really know.

Q. When did you take charge at Albany?—A. Some time in July, 1906.

Q. During the last four months of 1906 weren't you selling oil in Albany at a loss?—A. I don't remember.

Q. It appears by the record that you were. Have you refreshed your recollection by looking it up at all?—A. No.

Q. At about what price were you selling oil at Albany the last four months of the year 1906?—A. I really couldn't tell you exactly.

Q. Wasn't it 7 cents?—A. Somewhere around there.

Q. At the same time you were selling it in New York at 10 cents, weren't you?—A. Yes.

Q. Will you tell us why that was?—A. Because somebody else must have been selling as low as that.

Q. In Albany?—A. In Albany.

Q. Do you know that you were not selling lower than somebody else in Albany?—A. No; I don't believe we were.

Q. Do you know? I asked you.—A. Do I know whether we were selling or not?

7935 Q. Yes.—A. I don't know personally, positively; no.

Q. Has there been a single time in three years that you haven't sold oil lower in Albany than anybody else there—any of your competitors?—A. I don't believe we have.

Q. You don't believe it?—A. No, sir.

Q. Do you know it?—A. I know we haven't.

Q. Do you know the Hisgens?—A. I know only of them what I read in the newspapers.

Q. Don't you know that during that same time they were selling oil at a higher price than you were?—A. I do not.

Q. Do you know that it wasn't true?—A. Know that what wasn't true?

Q. Do you know that they were not selling oil at a higher price than you were?—A. Do I know they were not selling it?

Q. Yes.—A. I don't know what they were selling at.

Q. Who are your principal competitors in Albany?—A. The Tiona and Hisgen Brothers.

Q. Which sells the most oil?—A. I really couldn't tell you that.

Q. Now, it costs more money to market the oil in Albany than it does in New York, doesn't it?—A. I don't think it does.

Q. How do you get your oil there?—A. We get it there by tank car from some of the various refineries.

Q. You have to pay freight on it?—A. Yes.

Q. Here in New York you get it right from the refinery, don't you?—A. It is taken by bulk boats; yes.

7936 Q. You have to pay more freight on the oil to Albany than you do to New York City, don't you?—A. If you figure right from the refinery, yes. But there are other expenses come in that, you know. New York City is an expensive place to do business in.

Q. Yes, but your statements here show the cost of marketing oil in New York and the cost of marketing oil in Albany, don't they? You keep such statements, don't you?—A. We have some such statements; yes.

Q. So you know exactly what it costs to market oil in Albany, and you know exactly what it costs to market it in New York, don't you?—A. I don't know now.

Q. You have records that show it?—A. We have records that show it; yes.

Q. I ask you if it doesn't cost more to market the oil in Albany, including the freight, than it does in New York?—A. I do not think it does.

Q. You don't think so?—A. No.

Q. Now, prior to 1906 just state the territory you had charge of.—A. I had charge of the New York City and Boston territory.

Q. What did the Boston territory include?—A. The Boston territory included the same as it does at the present time; that is, all of Maine, a large proportion of Massachusetts, and a large proportion of New Hampshire.

Q. Now, you have a system, or have had in the past, of paying rebates to your customers, haven't you?—A. No.

7937

Q. Never have done that?—A. Oh, in a few cases; but it is an exception rather than the rule.

Q. Well, you do that, do you, in some cases?—A. There have been a few cases, yes, but very few.

Q. Where have those cases arisen?—A. I couldn't say.

Q. Where there was active competition, wasn't it?—A. Not always.

Q. Well, name one place where you paid rebates where there was not competition?—A. I couldn't name you a place where we paid a rebate. I couldn't name you where we paid rebates.

Q. But you know you have paid them?—A. Oh, there have been a few paid.

Q. Now, what is your object in paying rebates?—A. Well, sometimes a man could buy a carload of oil, and he of necessity could command a better price, because he could go to the refinery and buy the oil.

Q. So you pay a rebate to keep the nominal price up and pay him a secret rebate, don't you?—A. No, we don't pay any secret rebate. We pay him because he can afford to buy in large lots; he becomes really a jobber, and for that reason we give him a better price.

Q. Then why don't you sell him straight, at a better price? What do you pay him a rebate for?—A. Well, as I say, I do not know of any case myself—actually know of a case of any rebates.

Q. Well, you know that such a thing has been done in your territory, don't you?—A. I have heard of it; that is all.

7938

Q. Have you authorized rebates?—A. I don't remember of ever authorizing any.

Q. Have you ever made any order or direction that they should not give them?—A. Yes.

Q. You have?—A. Decided orders.

Q. Decided orders?—A. Yes, sir;

Q. Always against your orders, were they?—A. Of recent date; yes, sir.

Q. Well, of recent date. That is what I am trying to get at. How recent?—A. Well, a couple of years.

Q. You reformed your methods about two years ago?—A. I didn't know as they needed reform.

Q. You changed your methods?—A. I simply said we didn't want any rebates.

Q. You didn't want any rebates?—A. No, sir.

Q. After two years ago?—A. Somewhere around there.

Q. That is about the time you did away with all these secret companies, too, isn't it—about two years ago?—A. Oh, I don't know whether we did away with secret companies or not.

Q. Well, you haven't got any running now, have you?—A. No.

Q. You had prior to that time, didn't you?—A. I didn't consider them secret companies; no.

Q. Well, companies that you were running which were not known to be Standard Oil companies?—A. Pretty well known
7939 as Standard Oil companies, the companies we were running; only running them for awhile, until——

Q. You want to change your testimony that you gave last winter, do you?—A. Oh, no; we had certain ones, you know, running; but I didn't say that they were running for blinds.

Q. You said they were running without being advertised as Standard Oil companies, didn't you?—A. You said, Did we advertise them? I said, "No; we didn't need to advertise them."

Q. Then, about two years ago you quit paying rebates?—A. That was my instructions.

Q. From whom?—A. Only my own.

Q. Oh, your own instructions?—A. Yes.

Q. To your men?—A. Yes.

Q. Prior to that time you occasionally paid them?—A. I believe they did. I don't know of them actually, myself.

Q. But you heard of it?—A. I have only heard by hearsay; that is all.

Q. Now, how did you get the invoices of your competitors' oil, showing their prices?—A. I don't know how they got them. Probably they went to the storekeeper, and the storekeeper probably gave them to our men.

Q. Your man got them, did he?—A. I suppose so.

Q. And sent them to you?—A. I have had them in some cases.

Q. Now, do you know of your own knowledge that your agents never cut the price first?—A. Well, to the best of my knowledge and belief. They may have done so without my knowl-
7940 edge, but they couldn't haven't gone on very long with those things.

Q. Now, what do you call a fair profit to a marketing company?

Mr. ROSENTHAL. I object to that as not cross-examination. The witness wasn't examined on that on direct examination, does not pretend to know anything about it, and has not undertaken to testify to it, and is not under any obligation to do so now.

Q. You may answer the question.

Mr. ROSENTHAL. Do you know anything about it, Mr. King?

(No response.)

The following question was read to the witness: "What do you call a fair profit to a marketing company?"

A. That is a rather difficult question to answer.

Q. Well, please answer it the best you can.—A. When you don't know how to answer it, I could hardly answer it.

Q. You can't answer it?—A. No; I couldn't really answer it.

Q. Now, you say you sold heaters, stoves, and lamps. What lamps do you sell? What is the name of them?—A. Rayo lamps.

Q. Who manufactures them?—A. I forget the name of the party we purchase them from.

Q. You buy them?—A. Oh, we purchase them; yes.

Q. The Standard Oil of New York?—A. Yes.

Q. You did not patent the lamp?—A. No.

Q. And you do not manufacture it?—A. No.

Q. You buy it and sell it to your customers, to increase the
7941 consumption of oil?—A. Yes.

Q. Can you give us the name of the company you buy them of?—A. It has just escaped me for the present time. I would be glad to give it to you at any time.

Q. Do your books show what profit you made on the lamps?—A. Yes. I don't think it shows any profit.

Q. You don't think it does?—A. I have seen in some cases where it showed a loss.

Q. So you occasionally lose money on lamps as well as oil?—A. I didn't say we lost money on oil.

Q. Now, what stoves do you sell?—A. They are manufactured by the Cleveland Foundry Company and some other concern.

Q. The Cleveland Foundry Company; is that a Standard Oil concern?—A. No, sir.

Q. You buy them?—A. We buy them.

Q. And sell them to the trade?—A. To the trade.

Q. To what extent do you handle stoves?—A. To a very large extent.

Q. Have you any statement in your books showing your transactions in stoves?—A. I think there must be.

Q. Will you make a statement showing the financial transaction of handling stoves?—A. If it is absolutely necessary I suppose I can get it.

Q. You sell heaters, do you?—A. Oh, yes.

Q. Do you buy those of anybody?—A. Yes; from two or three parties.

Q. Who are they?—A. The Cleveland Foundry Company,
7942 and one or two other concerns we buy them from.

Q. What are the names of them?—A. I forget the names of the other parties.

Q. Any of them Standard Oil concerns?—A. None.

Q. None whatever. You buy those and sell them to the trade?—A. Yes.

Q. Now, is there anything else except those three articles—lamps, stoves, and heaters—that you buy and sell to the trade?—A. Once in a while a few storage tanks for stores.

Q. Now, do you know that you made no profit on any of these?—A. Oh, no; a very small profit.

Q. There is a small profit?—A. A very small profit, taking in the total; there is but very little profit on them. If we charged the marketing of it, there would be scarcely any profit.

Q. But there is a small profit?—A. I couldn't really say as to that without looking at it.

Q. Well, you sell these lamps, stoves, and heaters at the same price other people sell them at, don't you, practically?—A. I couldn't really say that.

Q. Do you know whether you do or not?—A. No.

Q. You don't know whether anybody else sells them for less or more than you do?—A. I do not.

Q. Then, there is a small profit to your company in these articles that you sell?—A. I do not know.

Q. What do you say about it—whether there is or isn't?—A. I don't know whether there is a profit or not, really.

7943 Q. You don't know how much it is?—A. Oh, no.

Mr. ROSENTHAL. He said he didn't know that there was any.

Q. Well, do you know that there isn't any?—A. I couldn't tell you either one or the other.

Q. You always instruct your men not to run down their competitors?—A. I do.

Q. You have very great consideration for them, I suppose?—A. I do, for those who act nicely.

Q. Well, that is left to your judgment—as to whether they act nicely or not—I suppose?—A. Well, they usually do.

Q. They usually act nicely?—A. Oh, yes.

Q. Well, when did you give such an order?—A. I have always given it. The instructions have always been so.

Q. Have you given any of those instructions in writing?—A. I suppose I have, but I can't tell when.

Q. You couldn't tell?—A. No.

Q. And your agents are instructed not to speak disparagingly of their goods?—A. They are.

Q. Have you given any of those instructions in writing?—A. I suppose I must have, at some time; I can't remember that.

Q. You can't remember?—A. No. It has been our invariable rule, though—mine has.

Q. Now, was it out of a tender consideration for your competitors that your company was selling oil in Albany at a loss?—A. When?

Q. During part of the year 1906.—A. I don't know as we
7944 considered them that. Possibly somebody else was selling oil at that figure, and we were forced to do it.

Q. Don't you know that wherever in your territory the percentage of competition gets quite large you go in and cut the price and sell it at a loss until they are run out?—A. No, sir.

Q. You don't know it?—A. No, sir.

Q. Don't you know that in Springfield, when Mr. Hisgen commenced to do business there, you put the price of oils down and sold it at a loss for two years?—A. No, sir. I didn't have charge of it, and I couldn't tell you.

Q. And that when their percentage got down to 12 per cent instead of 30 per cent of the business, then you raised the price?—A. I don't know anything about it.

Q. You don't know anything about it?—A. No, sir.

Q. Now, you say that in no part of your territory has a competitor been selling oil ahead of the Standard Oil—before the Standard Oil?—A. I never have heard of a place; no.

Q. Do you know whether that is so or not?—A. To the best of my knowledge and belief, it is so.

Q. Well, you have only been in control of this whole territory for about two years?—A. Yes.

Q. You don't know what occurred before that, do you?—A. Only from hearsay.

Q. I suppose petroleum has been sold in all parts of your territory by somebody for more than twenty years hasn't it?—A. I sup-
7945 pose so. You couldn't expect me to tell you back for twenty years.

Q. So that when you say the Standard Oil was first in the market you don't know what you are talking about, do you?—A. Yes. I think for twenty years, the question was put to me.

Q. You know what has gone on in this territory for twenty years, do you?—A. By hearsay.

Mr. ROSENTHAL. Well, that is very valuable testimony in this case, Mr. King.

Mr. KELLOGG. What is?

Mr. ROSENTHAL. Hearsay.

Mr. KELLOGG. Well, it is on your side.

By Mr. MORRISON:

Q. What are you selling oil for in Albany to-day?—A. 8 cents.

Q. What are the Hisgen Brothers selling it for?—A. I do not know.

Q. You get reports, don't you?—A. No, sir.

Q. What were you selling it for there a month ago?—A. 8 cents.

Q. What were the Hisgen Brothers selling it for?—A. I don't know.

Q. Don't you know that they were selling it for 8½?—A. No.

Q. Have you had any report of prices from Albany up until within the last 30 days?—A. In regard to the prices we are selling oil for?

Q. Yes—the prices of your competitors.—A. The prices of
7946 our competitors? No.

Q. When did you get the last report?—A. I don't remember.

Q. Don't you keep any track of what your competitors are selling for?—A. No; except the information that our field people may give us.

Q. Have they given you any?—A. I have never heard of them selling oil at higher than 8 cents there.

Q. Have you ever heard of their selling it as low as 8 cents?—A. Oh, yes.

Q. When?—A. Within two or three months, I think it was.

Q. Give us the period?—A. I couldn't give you the exact period.

Q. Do you swear that they have sold oil for less than 8½ cents within three months?—A. I couldn't swear that they have sold oil at any price; I couldn't tell you.

Q. Aren't you as familiar with the prices for which they sell their oil as you are the prices for which you sell it?—A. No.

Q. How often do you get reports of the prices that competitors are charging?—A. Oh, there is no stated time.

Q. About how often?—A. I couldn't give you any stated time at all. It is just a question of when a report comes that they sell at a less price than we do.

Q. Will you swear that there has been a time during the year 1908 that the Hisgen Brothers were not selling from half a cent to a cent higher, in Albany, to the retail trade, than you were?—A. I couldn't swear to it, no.

7947 Q. Was there a time during the year 1907 that they were not selling for a cent more on a gallon than you were selling, in Albany?—A. I couldn't swear to it.

Q. You mean you don't know about that?—A. No; I couldn't swear to it.

Q. Has there been a time since you have had the Albany department under your jurisdiction that the Hisgens have not been selling at a higher price in Albany than you have?—A. I couldn't say to that.

Q. They are your principal competitors there, aren't they?—A. I should judge they were.

Q. Now then, let's take Springfield. You are familiar with the prices in Springfield, Massachusetts, aren't you?—A. Yes, sir.

Q. What are you selling oil there for now?—A. 8½ cents.

Q. How long have you been selling it for 8½ cents?—A. Since last March.

Q. What are the Hisgens selling it for?—A. I don't know.

Q. Do I understand you that ever since March you sold at 8½?—A. Yes, sir.

Q. To the retail trade?—A. To the store trade.

Q. Have you allowed any rebate back from that price?—A. Not that I know of.

Q. Would you know it if it had been allowed?—A. Usually I do, but of course there might be some exceptional case; but, to the best of my knowledge and belief, there has been none.

7948 Q. Right along, haven't you been allowing rebates until within the last three months?—A. To the best of my knowledge and belief there is not a single rebate in Springfield.

Q. Has there been a time in Springfield for the last two years at which the Hisgen Brothers were not selling from a half cent to a cent higher on the gallon than you were?—A. I couldn't answer that.

Q. You mean by that that you don't know whether they were or were not?—A. Yes.

Q. Well, I understood that you kept track of market conditions in these various towns within your jurisdiction?—A. We do, our own marketing conditions; yes.

Q. Don't you keep any track of what your competitors are selling for?—A. Not except from time to time the manager of the field may come in and report that somebody is underselling him.

Q. Who is your principal competitor in Springfield and in the Springfield territory?—A. Mr. Hisgen, I think it is.

Q. The Hisgen Brothers?—A. Yes.

Mr. MILBURN. Four Brothers?

WITNESS. Or Four Brothers. I don't know which of the gentlemen.

Mr. MORRISON. No; that don't apply to the oil business.

Q. You don't know anything about price conditions in Springfield prior to 1906, do you, at all?—A. No.

Q. You don't know, then, whether the price was cut by the Standard or cut by the Hisgen Brothers when they first went

7949 into Springfield?—A. No, sir.

Q. You have no knowledge upon that subject at all?—A. No.

Q. And you don't know who is selling oil there for the highest price—you or the Hisgens?—A. No.

Q. You spoke about delivering oil in cans.—A. Yes.

Q. Is that the square can?—A. Yes.

Q. That is the only kind of can you use, isn't it?—A. That is the only kind.

Q. Do you say that that is confined to large cities?—A. Yes.

Q. Exclusively?—A. Almost exclusively. Sometimes it may get around a little ways in the country.

Q. This square can is patented, is it?—A. Yes, the spout is.

Q. So that it cannot be filled by anybody except the Standard Oil Company?—A. Yes.

Q. How is that?—A. Yes; it can't be filled by anybody except the Standard Oil Company, except through a very hard process.

Q. Now, you don't deliver oil in cans except in the square cans?—A. That is as I understand all we deliver in cans.

Q. In what large cities are you using the square cans?—A. In Boston, Springfield, New York, Providence——

Q. Philadelphia?—A. I don't know anything about Philadelphia.

Q. You don't know whether they are using it, then, outside of your territory?—A. No; I couldn't say.

Q. You don't know whether they are using it in Chicago or not?—A. I couldn't say.

Q. Aren't you using it in other places in Massachusetts aside from Boston and Springfield?—A. Well, in Massachusetts,
7950 around the suburbs of Boston, some of the towns around there; I think that is about all.

Q. How about Long Meadow? Do you know anything about that? Are they using it over there?—A. I don't think so. It is a very small place. I never heard of them going there.

Q. Do you use the square can anywhere, Mr. King, except where you are trying to drive out competitors?—A. Why, we use it anywhere where we feel like using it, irrespective of competitors.

Q. Why don't you use it everywhere, then?—A. Because we don't feel inclined to use it everywhere. It is the only peddling can we use. If we wanted to go to some place where there was nobody in, we would use that peddling can.

Q. Have you ever gone to a new town where there was nobody and used the square can?—A. Oh, yes.

Q. Where? Give us one instance.—A. I couldn't now give you an instance, but we have put those in in some places.

Q. Can't you give me one instance?—A. I can't give you now, no.

Q. You didn't put them into Massachusetts until a short time ago, did you, outside of Boston?—A. I don't know when they put them in there, you know. I hadn't charge when they put them in there.

Q. Never put them into Massachusetts outside of Boston until the Hisgens went into your territory, did you?—A. I don't know
7951 that. I couldn't tell you. I didn't have charge of the territory then. I can't tell you when it came in there. I know that they had them in Boston many years, and had them in New York many years, irrespective of the competitors.

Redirect examination by Mr. ROSENTHAL:

Q. You were asked by Mr. Kellogg whether all the oil that went into Maine, Massachusetts, etc., was not shipped from refineries located in other States, and you said that it was. All of that oil, however, before it enters into the commerce of the State, first goes into the storage tank, that you told us of, does it not?—A. Yes, sir.

Q. In bulk?—A. In bulk.

Q. And from that storage tank it goes into the tank wagon, in the manner that you described this morning?—A. Yes.

7952 WILLIAM J. CALKINS, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is your full name?—A. William J. Calkins.

Q. Where do you live?—A. 522 West 112th street.

Q. New York?—A. New York City, yes, sir.

Q. What is your occupation?—A. Manager of the specialty department of the Standard Oil Company of New York.

Q. What do you mean by the specialty department of the Standard Oil Company of New York?—A. We sell shelf goods, principally.

Q. Sell what?—A. We sell shelf goods, as they are called, of all kinds; cans, etc.; goods that are canned.

Q. Do you sell axle grease?—A. Axle grease, axle oil, harness oil, floor dressing.

Q. What is your axle grease called?—A. The Mica Axle Grease is our principal brand.

Q. How long have you been connected with the specialty department?—A. Of New York?

Q. Yes.—A. For 18 or 19 years, I have had charge of it; ever since it started.

Q. Do you know of the Hisgens, of Albany?—A. I have seen their names in the paper.

Q. They also sell axle grease, do they not?—A. Well, I would like to ask you a question. Are the Hisgens and the Four
7953 Brothers the same thing? The Four Brothers axle grease is the only axle grease I know of from Albany.

Mr. ROSENTHAL. Yes, it is the same thing.

Q. The Four Brothers or Hisgen Brothers also sell axle grease?—A. Yes, sir.

Q. And have for a good many years?—A. A great many years, yes.

Q. And they sell, I suppose, in the territory where you sell?—A. I have seen their grease, yes, sir.

Q. Well, as I understand you, for the last 18 years you have had charge of this specialty department?—A. Yes, sir; in New York; before that in Cleveland.

Q. Do you remember when you first came in contact with the Hisgen Brothers in the sale of axle grease?—A. About 18 years ago.

Q. Did you know at any time that the Hisgen Brothers had bought oil from the Thompson & Bedford department of the Standard Oil Company?—A. No, sir; I never knew of it.

Q. Was that ever within your knowledge?—A. Not at all, sir.

Q. Was it ever called to your attention?—A. No, sir, because there was no reason for it.

Q. Were you ever advised in any way, either directly or indirectly, by the refined oil department of the Standard Oil Company of New York or the Thompson & Bedford department or any other department, that Hisgen Brothers or Four Brothers had ceased buying
7954 paraffin oil or any other kind of oil from the Thompson & Bedford department or from the Standard Oil Company of New York?—A. No, sir; no member of the Standard Oil Company ever mentioned Four Brothers' name to me, or Hisgen Brothers. I never heard of them. No one ever mentioned them to me in any way.

Q. Then your broad answer to that question is, No?—A. No, sir; yes, sir.

Q. Did you ever sell at any time, or cause to be sold, Mica axle grease, which is manufactured by the Standard Oil Company of New York, at $4 a gross, in places where the Hisgen Brothers were selling their axle grease at $8 a gross, in order to get their business away from them, or for any other purpose whatever?—A. I never sold Mica axle grease at $4 a gross at any place.

Q. Then, your answer to that last question which I put is, No?—A. No, sir; yes, sir.

Q. Have you ever, during the 18 years that you have been in charge of the specialty department of the Standard Oil Company of New York, cut the price of Mica axle grease in order to secure business from any of the Hisgen Brothers' customers?—A. I never cut the price to secure business from any customer; I never made any exception as to one or the other.

Q. Was Mica axle grease put out by the New York company as a fighting brand, to fight competition?—A. Oh, no.

Q. It was put on the market for the purpose of making money, was it not?—A. Yes, sir; it was our trade-mark of axle grease, our best brand; we considered it the best axle grease made.

7955 Q. Did you ever sell to retailers Mica axle grease for less than $8 a gross in wood boxes or $8.50 a gross in tin ones?—A. No, sir.

Q. Who was your principal axle grease competitor, or who were they?—A. Frazer.

Q. Frazer?—A. Frazer's axle grease.

Q. That is an old, well-known and long-established brand, is it not?—A. It is; yes, sir; and it is to-day our principal competitor, and was then.

Q. Throughout the country?—A. Throughout the whole United States. Four Brothers' axle grease was never a competitor to amount to anything.

Q. What is the general policy that you have adopted, as the manager of your department, in instructing your salesmen in reference to their competitors?—A. To sell our goods on their merits. We didn't want to know anything about competitors' goods—were not supposed to know anything about them.

Q. You do not run down your competitor or his goods?—A. No; don't run them down. We have nothing to say about it. We sell our goods on their merits, entirely. Such are our instructions to our men.

Q. That you consider a broad and good business policy?—A. We consider it so; yes, sir. We could make nothing by running down our competitors' goods or our competitor.

Q. Any business man of any capacity would know that, wouldn't he?—A. I should think so; yes, sir.

7956 Q. Outside of the Frazer's and the Hisgen's, did you have other axle grease competitors?—A. There are very many competitors, that is, local competitors. Nearly every section has some local axle grease maker. It is not an expensive thing to start an

axle grease plant. There are many small competitors throughout the country.

Q. Have you named as many competitors now as you can think of?—A. They are the principal competitors throughout the United States, yes, sir. .

Q. Frazer and the Hisgens?—A. Frazer and the Hisgens, yes, sir. Frazer is the principal competitor.

Q. Did you ever call upon the refined oil department, or any other department of the Standard Oil Company to assist you in selling your axle grease?—A. I did not.

Q. Did you ever directly or indirectly request any other department to bring pressure to bear upon a customer who was buying refined oil, by refusing to sell him refined oil unless he bought axle grease from your department?—A. I never did.

Q. Did you ever talk with any human being about that?—A. No, I never did; I had nothing to do with the refined oil department, any more than you have.

Cross-examination by Mr. MORRISON:

Q. You have been manager, have you, of that department, for 18 years?—A. 18 or 19 years, yes, sir.

Q. You are not out on the road, are you?—A. No, sir, not all the time.

7957 Q. Your business is entirely confined to the office end of it?—A. Managing the business.

Q. You have salesmen out on the road?—A. I have.

Q. And I suppose you don't know what they are doing all the while, do you?—A. Pretty near. I know what comes into the office on the daily reports, yes, sir.

Q. How long have you been manager of that department?—A. 18 or 19 years.

Q. Does that cover the entire country?—A. No, sir.

Q. What territory is within your department?—A. At the present time?

Q. Yes; the present time, first.—A. Greater New York, and Long Island up to Poughkeepsie, New York State, and east—the Eastern States.

Q. Have you ever had any other territory?—A. Oh, yes, yes, sir.

Q. What other territory?—A. The balance of New York State, Pennsylvania, New Jersey.

Q. When were the boundaries of your present territory fixed?—A. About 1900.

Q. Were you ever traveling salesman on the road?—A. Oh, yes, yes, sir.

Q. When did you cease to be?—A. About 20 years ago.

Q. And you have had no experience on the road since then?—A. More or less all the time.

Q. Who is your superior officer?—A. Mr. Senior, at the present moment.

7958 Q. What is his position?—A. He has charge of the specialty business, I think, throughout the State of New York.

Q. Who fixes the prices?—A. I do.

Q. Has your superior officer anything to do with that?—A. He has not; no, sir.

Q. You know, I suppose, that there never has been a gross of axle grease sold for less than $8?—A. Not to my knowledge and belief, and I think I have seen every order that has gone through, practically.

Q. Your principal competitor is the Frazer axle grease?—A. The Frazer Axle Grease Company; yes, sir.

Q. Where is that manufactured?—A. Jersey City, St. Louis, and Chicago.

Q. Where are the principal offices?—A. I can't tell you.

Q. Who owns the stock of that company?—A. I can't tell you anything about it, sir.

Q. Do you own any?—A. I do not.

Q. Don't you know that it is owned by Standard Oil interests?—A. I have no more idea, sir, than——

Q. Never heard that?—A. I never heard it. You are the first man that ever suggested it to me, sir.

Q. Do you know who the officers of that company are?—A. I don't know; I never heard of their names; know nothing about them.

Q. What is the name of this Frazer axle grease company? Is that all there is to it?—A. That is all the name that I know of; yes, sir. I just simply saw that on their wagons as they
7959 go by.

Q. That company has been in business a great many years, hasn't it?—A. I think it has; yes, sir.

Q. Do you make any brand besides the Mica?—A. Oh, yes; yes, sir.

Q. How many brands do you carry?—A. Four or five.

Q. All sell at the same price?—A. Oh, no.

Q. Any of them sell below $8?—A. Oh, yes; yes, sir; and some higher.

Q. Do you have a brand that you sell for less than that?—A. Oh, yes; yes, sir.

Q. How low do you sell your cheapest brand?—A. We sell the cheapest brand as low as $4.50 a gross.

Q. You said in your direct examination that you never sold axle grease for less than $8, didn't you?—A. Mica axle grease.

Q. This is another brand?—A. Entirely; the same as another suit of clothes.

Q. Well, is that the cheapest brand, now, that you have sold, that which you sell for $4.50?—A. Yes, sir.

Q. What is the name of that brand?—A. Star.

Q. Did you ever sell that for less than $4.50?—A. No, sir.

Q. You are absolutely certain of that, are you?—A. I am absolutely certain of it.

Q. Did you ever sell in Syracuse yourself?—A. Yes, sir.

Q. How many years ago since you sold in Syracuse?—A. A little over twenty years ago.

7960 Q. You don't know anything about 1900, then?—A. No. I don't know anything about Syracuse in 1900; no.

Redirect examination by Mr. ROSENTHAL:

Q. Have you ever during the time that you have had charge of the department, cut the price in the sale of your axle grease, in order to affect the trade of your competitor?—A. I have not.

Q. Or obtain trade from your competitor?—A. I have not.

Q. And that applies, as I understand it, to your whole 18 years' experience?—A. Yes, sir.

Q. You have charge of that department, do you?—A. I do.

Q. And orders from your salesmen come to you——A. Direct to me; yes, sir.

Q. And you therefore know the prices at which your product is sold?—A. I do.

Q. That has been true during the entire period of time that you have had charge?—A. During the whole 18 years; yes, sir.

By Mr. KELLOGG:

Q. You didn't have the whole United States, did you?—A. Oh, no; no, sir.

Q. Only the department that you have described?—A. That I have described; yes, sir.

Mr. MORRISON. When was it that you ceased to have charge of the district in which Syracuse is located?

WITNESS. It was about 1900.

7961 WILLIAM D. MCMILLAN, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is your full name?—A. William D. McMillan.

Q. Where do you live?—A. Boston.

Q. For how many years?—A. Approximately, five years.

Q. What is your business?—A. I am the manager of the Boston department of the Standard Oil Company of New York.

Q. What does that mean?—A. It means what it says. I am in charge of the Boston department of the Standard Oil Company of New York.

Q. As described by Mr. King in his testimony?—A. Yes, sir.

Q. You heard him testify?—A. Yes, sir.

Q. And you have been for five years?—A. Since January 1, 1903.

Q. How long have you been connected with the Standard Oil Company?—A. 19 years.

Q. Before the last five years, what was your position?—A. I was manager of the Albany department for approximately five years, and prior thereto I was in Burlington, Vermont, for about four years, then I was at Kingston, New York, for five or six years—five years, I guess it was.

Q. So throughout all of the 19 years that you have been connected with the company, you have been working in the field of
7962 the Standard Oil Company of New York?—A. Yes, sir.

Q. Do you know any of the Hisgens?—A. I know Mr. Henry Hisgen, and Mr. George Hisgen, slightly; I never knew them very intimately.

Q. And from when does your acquaintance date?—A. I think about 1899; perhaps 1898. I guess it was 1898.

Q. Where did you meet them at that time?—A. My first recollection of meeting Mr. George Hisgen was in my office.

Q. Where?—A. In Albany.

Q. What was their business then?—A. They were manufacturing axle grease.

Q. Where were they located?—A. At a building in the south end of Albany, owned by the Standard Oil Company of New York, that they occupied under a verbal lease, at the time I went to Albany.

Q. So at that time they were occupying, under a monthly rental arrangement, a building owned by the Standard Oil Company of New York?—A. Yes, sir.

Q. Do you remember when they stopped buying paraffine oil from the Thompson & Bedford department?—A. I remember when they stopped buying the oil, but I can't tell you the exact date.

Q. Well, at that time were they still occupying these premises?—A. They were.

Q. Do you know whether they were forced out of there because they stopped buying their paraffine oil from the Standard?—
7963 A. I know that they were not forced out of there for any reason.

Q. Tell us what you know about that, Mr. McMillan.—A. A short time after they discontinued buying their paraffine oil of the Thompson & Bedford department, Mr. George Hisgen called at my office and asked if he might continue occupancy of the building, and I told him that he certainly could, that we would be very glad to have him stay there as long as he wanted to stay, at the same rental and under the same conditions that he was then occupying the building.

Q. How long did he stay after that?—A. I think approximately 10 or 12 months.

Q. And do you know why they vacated when they did vacate?—A. They bought the property to which they moved their business.

Q. It is not true, then, as I understand you, that they were forced out by the Standard Oil Company for any reason whatever?—A. Certainly not.

Q. Do you know of any offer having been made, during the period from 1898 to 1903, by anyone connected with the Standard Oil Company, to buy out the Hisgen Brothers?—A. I do not.

Q. Anyone from Syracuse or any other place?—A. No.

Q. Did you ever hear of it?—A. No, sir.

Q. You were right there in charge of the business of the Standard Oil Company at that time?—A. Yes, sir.

Q. Do you remember about when the Hisgens started in the sale of refined oil?—A. Either the latter part of 1900 or the early
7964 part of 1901, in Albany proper. I think they started selling barreled oil a little prior to the time that they started operating their tank wagons in Albany.

Q. Did they sell in the towns along the Hudson?—A. Yes, sir.

Q. Is that where they started?—A. That is my recollection.

Q. Do you remember the price movement about that time?—A. Yes, sir.

Q. When the Hisgen Bros. started selling refined oil in those Hudson River towns, did the Standard Oil Company cut the prices in order to prevent them from getting business, or driving them out of business at those points?—A. They did not.

Q. Do you know who did make the cut in the first instance?—A. No cuts made.

Q. Well, tell us all you know about that.—A. The story is a very simple one. As I recall it, the Hisgen Bros., when they started selling refined oil, sold their oil at about the same or a greater price than ours. They didn't cut our price, consequently there was no occasion for our cutting theirs; in any event, we didn't cut it, nor did they cut ours; on the contrary, we advanced our price after they started business.

Q. Was the price of oil generally low at that time?—A. I think so. Yes, it was.

Q. Is it true that the Standard Oil Company reduced its
7965 prices to persons to whom the Hisgens sold oil, for the purpose of getting that business away from the Hisgens, and maintained their prices to other customers?—A. It is not.

Q. Nothing of that kind was done?—A. No, sir.

Q. During the five years that you were in charge of that territory?—A. No, sir.

Q. I suppose it sometimes happened that the Hisgen Bros. took customers away from you?—A. Yes, sir.

Q. And did those customers in many instances come back to the Standard Oil Company?—A. Yes, sir.

Q. Under what circumstances?—A. They seemed to be glad to come back, due to the fact that we had much better facilities at that time for supplying them, and there really was no occasion for their leaving us in the first place.

Q. Was the price reduced from about 12 cents to about 6½ cents, as soon as the Hisgens began selling oil from tank wagons at Albany in 1900?—A. It was not.

Q. What is the fact about that?—A. The price was 7 cents a gallon when they started, and had been for months prior thereto, and it was afterwards raised, in September, 1901; a number of months after they started their wagons the price was advanced to 7½ cents, and a little later to 8.

Q. Do you remember what the tank-wagon price of refined oil was, at Albany, in October, 1899?—A. I think about 8½ or 9 cents; I am not sure about that, however.

Q. And then, the next two years that price, as I understand,
7966 varied from time to time, and it did go as low as 7 cents?—A. Yes. It was about 10 cents, say the first of January, 1900; then the entire market throughout the entire field was gradually lowered 2 to 2½ cents a gallon, so that in the early part of 1900 our price in Albany was 7 cents a gallon.

Q. Had there been a general lowering of price throughout the entire field, at or about that time?—A. Yes, sir.

Q. Was that reduction from the 1899 price of 9 or 10 cents, to 7 cents in 1900, in any wise connected with the fact that the Hisgen Bros. began business in 1900?—A. It was prior to the time they began business, and prior to the time we knew that they were going to engage in the refined-oil business.

Q. Is it not true that the general reduction throughout the various towns of your field was about 2 cents in 1900 from the 1899 prices?—A. Yes, sir.

Q. Do you know of the Tiona Oil Company?—A. I do.

Q. Is that a marketing company owned by the Cornplanter Refining Company?—A. I so understand it.

Q. A refinery doing business in Pennsylvania?—A. Yes, sir.

Q. About the year 1900, the latter part of 1899, had that company started doing business at Troy, New York, a few miles from Albany?—A. Yes, sir.

Q. Just how far is Troy from Albany?—A. 5 or 6 miles.

Q. Is it or is it not true that the Tiona Oil Company, when they started doing business at Troy, cut the then prices of oil?—A. Yes, sir.

Q. To what extent?—A. Half a cent in ordinary cases; sometimes a cent.

7967 Q. That is, half a cent or a cent below your prices?—A. Yes, sir.

Q. And is it not true that the 7 and 7½ cent price that was finally made at Albany was made for the purpose of equalizing the Albany price with the Troy price?—A. Yes, sir.

Q. The towns being but 5 or 6 miles apart?—A. Yes, sir.

Q. Prior to 1903 did the Hisgen Bros. do much of any business at Albany?—A. Not enough to be any factor in the situation at all.

Q. They were not regarded by you as a factor at all——A. Not at all.

Q. During 1900, 1901, and 1902 were they?—A. No, sir.

Q. So far as the sale of refined oil was concerned?—A. Yes, sir.

Q. Did you ever intimidate or cause to be intimidated in any way whatever any of Hisgen Bros.' customers in your field, for the purpose of inducing them to buy oil from the Standard?—A. Did not.

Q. Or advise those customers that the Hisgens would soon be driven out of the field and that they had better get under cover while they could?—A. I did not.

Q. Nothing of that kind ever took place?—A. No, sir.

Q. Now, so far as you know, you are the only McMillan that represented the Standard Oil Company at Boston, are you not?—A. I think so.

Q. During the year 1903 or 1904, or thereabouts?—A. Yes, sir.

7968 Q. Do you remember meeting Mr. Henry A. Hisgen?—A. I do.

Q. At Boston?—A. Yes, sir.

Q. He testified at Albany that you endeavored at that meeting at Boston to purchase their refined-oil plant at Springfield. Will you tell us what the facts are in that connection?—A. Along in December, I think, in 1904, Mr. Royal, of the New England Oil Company, telephoned me and asked me if I was willing to see Mr. Henry Hisgen—grant him an interview. I told him that I would be very glad to see him. A few days after he telephoned again that Mr. Hisgen would like to see me in his room at the Parker House that or the following night (I am not quite clear as to that), and I accordingly met Mr. Hisgen in his room in the Parker House, and after some little preliminary greetings he said that he wanted to sell his Springfield plant to the Standard Oil Company, and wanted me to see whether or not I could effect the sale. I asked him what he wanted for the plant, and he said $15,000. I asked him what he had to convey for the $15,000, and he enumerated the equipment, which aggregated approximately $7,000. I asked him what was represented by the difference of $8,000, and he said that represented his loss since he had been operating the Springfield plant, and he wanted to be reimbursed for that loss if he sold the business to us. He further said that if I would effect the sale of the business he would continue to

7969 operate it as a sub rosa plant for the Standard Oil Company, or close it up, or do anything that we suggested in the premises that would be satisfactory to us. I then asked him if he had any other properties, if he wanted to sell his other plants, and he said that he did not. That practically closed the interview, and I agreed, when leaving him—I told him, however, that the Springfield plant was not in my field, that it was rather a delicate matter for me to take up with our people, but that if anything came from the interview I would let him know. Nothing did come from it, and I consequently never had any further communication with him on the subject.

Q. Did you communicate that offer to anyone connected with the Standard?—A. No; not to 26 Broadway. I felt that the offer was one that our people wouldn't consider, and, it being outside of my field, I felt delicate about referring to it at all. But a few days or weeks, possibly, after the interview I wrote to Peter Watt, at Providence, in whose field Springfield is located, and in substance told him the character of this particular interview, and then it was up to him to do anything——

Q. And that was the last you heard of it?—A. That is the last I heard of it.

Q. And the plant wasn't purchased?—A. Not purchased, to my knowledge; no, sir.

7970 Q. During the five years that you were in Albany what were your general relations with the Hisgens—pleasant or otherwise?—A. Pleasant, as far as I know.

Q. I mean particularly after they began selling oil.—A. Yes, sir; as far as I know.

Q. Well, you know, do you not, so far as you are concerned?—A. Absolutely pleasant.

Q. Mr. McMillan, for a few months during the year 1902, I observe that the price of refined oil sold from tank wagons at Albany was 6½ cents. Will you please tell us the circumstances under which that reduction was made?—A. Our price prior to the 6½-cent period was 7½ cents, as I recall it. One day the Tiona Oil Company's tank wagon, accompanied by an escort of two salesmen, one of whom was on each side of the street, came to Albany, and that was their first trip to Albany. Prior thereto they had confined their efforts to Troy and immediate vicinity. They came to Albany and solicited business from the merchants at 6½ cents a gallon—a cut of 1 cent below our price. Three men, one on the wagon, one on each side of the street; store to store. That fact was communicated to me very quickly by various merchants and by our own people, and in fact I saw the wagon go by the office door myself. I think they came around the corner so that I might see it. At any rate, I did see it. Within an hour or two the merchants commenced to telephone us of this cut price, and, fortunately, they all stayed with us, and

7971 after a day or two we lowered our price to meet that condition, and kept it there for about four months, as I recall it, at which time the Tiona people discontinued their trips to Albany, and we immediately advanced our price 1 cent a gallon, to 7½ cents.

Q. Where it had been theretofore?—A. Where it had been before.

Q. Now, during those four months did the Tiona wagon make more than that one trip to Albany?—A. Oh, yes; they came there regularly.

Q. And offered the oil at 6½ cents?—A. At 6½ cents.

Q. And it was to meet the cut made by the Tiona——A. Exactly.

Q. That you cut your price from 7½ to 6½?—A. Yes, sir.

Q. During the five years that you were in charge of the Albany division where was your oil stored? Where were your storage tanks?—A. In Albany. That was our main storage plant.

Q. And what was the territory comprised within the Albany division?—A. Approximately both sides of the Hudson River; actually both sides of the Hudson River south to and including Fishkill on the east.

Q. Both sides being in New York State?—A. Yes. South to and including Nyack on the west.

Q. That is also in New York?—A. That is also in New York. North to and including Rouses Point, New York; west to and including Fonda, New York, and east to the State line, and beyond

into North Adams, Massachusetts, and into Bennington, Vermont, also.

7972 Q. Now, all of the oil that was sold from tank wagons within the State of New York, in that district, came from what storage tanks?—A. Mostly from Olean; some from Buffalo.

Q. Those were the refineries?—A. Those were the refineries; yes, sir.

Q. And from the refineries they went to the storage tanks at Albany?—A. At Albany and other points.

Q. And from these storage tanks they went into the tank wagons to the customers?—A. That is it, exactly.

Q. Is that right?—A. Yes, sir.

Q. About what percentage of that business was done entirely within the State of New York?—A. I think it is safe to say 99 per cent of it was done within the State of New York.

Q. That is what I mean; from the storage tank to the customer.—A. Yes, sir.

Q. All of 99 per cent?—A. Make it 98 per cent.

Q. Fully 98 per cent?—A. Fully 98 per cent; yes, sir.

Q. And all of the barreled oil that you sold in your New York territory was barreled at Albany, was it not?—A. Entirely, or some other point in New York State.

Q. Well, either at Albany or these other New York tank stations?—A. That is right.

Q. You were in charge of that Albany district about three years after the Hisgens began selling oil, were you not?—A. A little less than that.

Q. About how long?—A. Assuming they commenced in the latter part of 1900, it was two years and three or four months.

7973 I am not clear, but it was either the latter part of 1900 or the early part of 1901, but I think it was 1901.

Q. During those several years after they began business, while you were in charge, did you ever cut prices in your territory where they were selling oil, or cause prices to be cut, or know of prices being cut, for the purpose of taking customers away from them, or driving them out of the oil business?—A. I did not.

Cross-examination by Mr. KELLOGG:

Q. You say 98 per cent of the oil that you sold in that district, which you name, did not cross the State line?—A. I think that is about right.

Q. Well, all the oil you sold in Vermont and Massachusetts crossed the State line, didn't it?—A. Exactly.

Q. Was that only 2 per cent of the oil sold?—A. I beg your pardon. That is not so. I will have to answer no to that first question.

Q. Do you manufacture any oil——A. Now, let me tell you. Let me get it right. In North Adams, while I had charge of North Adams, the oil we sold in North Adams came from Boston often, and not from Albany. It didn't come from the State of New York. It was shipped from Boston into North Adams.

Q. Where did it come from to Boston?—A. I don't know.

Q. You didn't manufacture it in Boston?—A. I wasn't there at that time.

7974 Q. You knew they didn't have a manufactory there?—A. No; I did not at that time.

Q. You knew they never had a manufactory there?—A. No, sir.

Q. Did you ever hear of their having one there?—A. No.

Q. Do you think they ever did have one there?

Mr. ROSENTHAL. Let us assume they didn't.

Mr. KELLOGG. Let us assume what this witness is swearing to.

A. I think there were a number of them there.

Q. What?—A. I think there were some refineries there years ago.

Q. Was there one there in 20 years?—A. I think there is one there to-day.

Q. Who owns it?—A. The Jenny Manufacturing Company.

Q. Well, did you get any oil from the Jenny Manufacturing Company?—A. No.

Q. Did the Jenny Manufacturing Company refine any oil?—A. I don't know.

Q. Then you don't know of any manufacturer there that ever refined any oil, do you?—A. Yes, sir.

Q. What one?—A. Not that are refining oil to-day.

Q. Well, that ever did?—A. Pierce and Canterbury.

Q. How many years ago?—A. I don't know.

Q. Is that a Standard Oil concern?—A. It is now.

Q. When did they buy it?—A. Long before my time.

7975 Q. How many years since they have been manufacturing oil?—A. Oh, I don't know. That was long before my time.

Q. Yes; a good many years. You know very well, don't you, that the oil that went to North Adams came from beyond Boston?—A. I presume so.

Q. The oil that went to Vermont came from where?—A. From either Olean or Buffalo.

Q. Shipped direct to Vermont?—A. Yes, sir.

Q. And across the State line at what place?—A. By way of Albany, I think, all our shipments.

Q. Didn't you ship it by way of the Rutland Railroad, northern New York?—A. No, sir; not to points in the Albany field.

Q. Don't you know that the records in this case show large amounts of oil for years shipped from Olean and Buffalo to northern Vermont points via the Rutland Railroad?

Mr. ROSENTHAL. I object to that as wholly immaterial, and the witness has not undertaken as yet to testify to any northern Vermont points at all. He has testified to south of Vermont points that were within his jurisdiction.

A. I do not.

Q. You don't know it was not, do you?—A. I don't know anything about it.

Q. How far north did your territory go?—A. Manchester.

Q. As far north as Manchester?—A. I think it was about 35 miles; 30 perhaps.

Q. All the oil that went into that territory crossed the
7976 State line where?—A. I think it was shipped via D. & H. or the New York Central into Albany, and thence north via the Rutland Railroad to Manchester, as I recall it.

Q. And that comprised only about 2 per cent?—A. I think not to exceed that.

Q. Where did you get the oil for the Albany district, all of it?—A. Largely from Olean.

Q. Any from any other places?—A. Very seldom.

Q. Olean, New York?—A. Yes, sir.

Q. Did you get any from New York City?—A. No, sir.

Q. Never got any from there?—A. No, sir.

Q. Olean and Buffalo?—A. Very little from Buffalo.

Q. Did you get any from western Pennsylvania?—A. I think not.

Q. Now, what did you mean by running the plant at Springfield as a sub rosa plant?—A. Just what I said.

Q. That was customary in the Standard Oil years ago, wasn't it?—A. Not to my knowledge, no.

Q. Did you ever know of them running a plant sub rosa?—A. Yes, sir.

Q. What one?—A. I would have to qualify that, I guess.

Q. Tell us the name of the plant.

Mr. ROSENTHAL. Qualify it in what way—that you don't know?

WITNESS. That I don't know.

Q. You don't know? You never knew them to run a plant
7977 sub rosa?—A. I have known them to operate plants under different names, a different name from the Standard Oil Company. Whether that would be termed sub rosa or not is a question that is up to you.

Q. What did you mean by "sub rosa?"—A. I mean on the quiet. He would operate the company for us under the name of Four Brothers. That was the inference, don't you know?

Q. Now, you have known the Standard Oil Company to do that, haven't you?—A. I know they wouldn't do it now.

Q. No; I quite agree with you.—A. No.

Q. They have been taught quite a lesson. They used to do it, didn't they?—A. I couldn't say as to that, no.

Q. What did you mean when you said yes?—A. Well, I spoke too quickly, I guess.

Q. What plants have you known them to run in the name of some other company?

Mr. ROSENTHAL. I object to that. The witness has answered that he does not know.

Mr. KELLOGG. We will see whether he does or not. I think he does.

Mr. ROSENTHAL. I object to it, further, upon the ground that it is not cross-examination.

Mr. KELLOGG. Well, he has been talking about sub rosa plants.

Mr. ROSENTHAL. No, he hasn't.

Mr. KELLOGG. I want to see what he knows about it.

7978 Mr. ROSENTHAL. No, he has said that Hisgen wished him to buy his (Hisgen's) plant and run it sub rosa, and that is all he testified to upon his direct examination on that question.

Mr. KELLOGG. Read the question, please; and I want an answer to it.

(The following question was read: "What plants have you known them to run in the name of some other company?")

A. Troy Oil Works.

Q. Where was that?—A. Troy.

Q. When did they acquire it?—A. I don't know.

Q. About when?—A. I don't know.

Q. Were they running it when you went there?—A. Yes, sir.

Q. During all the time you were there?—A. Yes, sir.

Q. Ran in the name of the Troy Oil Works?—A. Yes, sir.

Q. To whom did the Troy Oil Works report?—A. To me.

Q. Where did they get their oil?—A. At Olean and Buffalo.

Q. Shipped direct to them?—A. Yes, sir.

Q. It didn't come through Albany?—A. No, I think not. I know it didn't, in fact.

Q. They were known to the trade as an independent concern, weren't they?—A. That I don't know. I presume so, yes. Yes, I presume they were.

Q. That was the understanding, wasn't it?—A. No understanding about it at all. There was the situation exactly, and there was

7979 a record made in the county clerk's office of that fact, that we were the owners of that business.

Q. Well, the public didn't know it, did they?—A. I don't know. I rather think they did.

Q. You didn't advertise it?—A. I am rather inclined to think they did.

Q. You think they got on to it after a while?—A. Yes, I think they knew of it always.

Q. They smoked you out after a while?—A. No, I think they knew it always.

Q. Now, you ran that without advertising as a Standard concern, didn't you?—A. Yes, sir.

Q. And you took pains to keep it from the public, didn't you?—A. No, sir.

Q. You didn't advertise it as a Standard concern, did you?—A. No, sir.

Q. It was run and officered by men who were not known to be connected with the Standard Oil Company, wasn't it?—A. I don't know what they were known as.

Q. When did they liquidate that company?—A. I don't know, I am sure.

Q. It was running when you left?—A. Yes, sir.

Q. Now name another one.—A. That is as far as I can go.

Q. You don't remember any others?—A. No.

Q. Do you remember the Maverick Oil Company of New England?—A. No, sir.

Q. You don't remember that?—A. No, sir.

Q. When did you go to Boston?—A. January 1, 1903.

7980 Q. You have no recollection of any other company ever having been operated in your territory in the name of an independent company owned by the Standard Oil Company?—A. They operated the Eastern Oil & Gasoline Supply.

Q. Where was that?—A. That was in Boston; a retail concern.

Q. When did you buy that?—A. I don't know.

Q. Was it in operation when you went there?—A. Yes, sir.

Q. When did you cease operating it?—A. We are still operating it under the name of Standard Oil Company.

Q. When did you put on the name of Standard Oil Company?—A. About three years ago.

Q. About 1905 or 1906?—A. Yes, sir.

Q. Wasn't it two years ago?—A. Possibly; between two and three; fully two.

Q. 1906, wasn't it?—A. Yes. I wouldn't say sure as to that. It is fully two. Two to three years.

Q. Prior to the time you put on the Standard Oil Company you didn't advertise it as a Standard Oil concern, did you?—A. No, sir.

Q. Who were the officers of it?—A. No officers.

Q. Who ran it?—A. Why, I suppose I did as much as anybody.

Q. Who had charge of its business in the field?—A. We had a foreman, superintendent, to look after it.

Q. And you didn't advertise it to the trade as a Standard Oil concern?—A. No.

7981 Q. Didn't the men who sold the oil to that company advertise it or hold it out as an independent company?—A. No, sir.

Q. They did not?—A. Not while I was there.

Q. Is that a corporation, that Eastern Oil & Gasoline Supply Company?—A. I think not.

Q. Just a name, isn't it?—A. I think so.

Q. The Standard Oil Company owned it all the time?—A. The Standard Oil owned the Eastern Oil & Gasoline Supply.

Q. Prior to the time you marked it Standard Oil it was simply a name, wasn't it?—A. Well, as far as I know.

Q. Owned by the Standard Oil Company?—A. As far as I know.

Q. Did you buy it of anybody, or how did you happen to get it?—A. I don't know.

Q. It was running in that condition when you went there?—A. Yes, sir.

Q. Now, name some other company that has ever run in the name of an independent.—A. I guess that completes the list.

Q. You think it does?—A. Yes, sir.

Q. You don't remember the Maverick?—A. No; I don't remember the Maverick.

Q. In all your territory you recollect no other company?—A. No, sir.

Q. When did you take charge of the district in which Springfield was situated?—A. I never took charge of that.

Q. Didn't you have charge of it when you were in Albany?—A. No, sir.

Q. You don't know anything about Springfield?—A. No, sir.

7982 Q. Who is Mr. Royal who you said got Mr. Hisgen and you together?—A. I think he was the principal proprietor of the New England Oil Company.

Q. What was the business of Mr. Royal?—A. He operated an oil plant over there.

Q. New England Oil Company?—A. Yes, sir.

Q. Selling agency, isn't it?—A. Why, I think at present he is the selling agent of the Gulf Refining Company, but that is only recently.

Q. Formerly the selling agent of the Cornplanter?—A. At one time, I think, years ago.

Q. How long did you say you had been in Boston?—A. Since about the first of January, 1903.

Q. And during those years after 1903 what kind of an understanding did you have with the New England Oil Company?—A. None whatever.

Q. Don't you know that the New England Oil Company had an agreement with the Standard Oil Company——A. I do not.

Q. Limiting the amount that they would sell?—A. I do not.

Q. A certain amount per week?—A. No, sir.

Q. You don't know anything about that?—A. No, sir.

Q. Well, what amount did they sell?—A. Why, they sold there the last few years about 24,000 or 25,000 barrels a year. I don't know positively about that.

(An adjournment was here taken until the morning of Wednesday, July 1, 1908.)

7983 ROOM 722, CUSTOM-HOUSE, NEW YORK CITY,
Wednesday, July 1, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Charles B. Morrison and Mr. J. Harwood Graves; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. John G. Milburn, Mr. F. L. Crawford, Mr. Douglas Campbell, and Mr. W. Cleveland Runyon.

It is agreed that copies may be substituted for petitioner's Exhibits 852 and 853.

WILLIAM D. MCMILLAN recalled and his cross-examination resumed as follows:

By Mr. MORRISON:

Q. You took charge of the Boston office on January 1, 1903, did you not?—A. Yes, sir, approximately. A few days later than that.

Q. Was Springfield, Massachusetts, within the Boston territory?—A. It was not.

Q. Have you ever had supervision over that station?—A. I have not.

Q. Who preceded you in the Boston office?—A. William Donald.

Q. Where is he now?—A. Dead.

7984 Q. Who had charge of the Springfield office in 1903, '4, '5, and '6?—A. I do not know positively.

Redirect examination by Mr. ROSENTHAL:

Q. Where is Hyannis?—A. On Cape Cod.

Q. State of Massachusetts?—A. State of Massachusetts.

Q. Was that in your territory while you were in charge of the Boston office?—A. Yes, sir.

Q. And that was so in January, 1906?—A. Yes, sir.

Q. Mr. Thomas Hisgen testified, in Albany, that while the Standard's price at Springfield was 7 cents a gallon in 1907, its price at Hyannis at the same time was 11½ cents. And it also appeared, in the course of that examination, that there was published in a Boston paper two alleged copies of the original selling tickets showing those respective prices in Hyannis and Springfield, as he claimed, namely, 7 cents at Springfield and 11½ cents at Hyannis. The newspaper publication had Mr. Hisgen's picture, which concealed the last figure in that part of the ticket showing the year, so that only the figures "190" appeared in the newspaper, the last figure being covered by his picture; his claim, as per his newspaper interview, being that the date was January, 1907. I show you defendants' Exhibit 82, and ask you what that is.—A. That is a duplicate tank-wagon ticket covering certain sales in the Hyannis field under date January 13, 1906.

7985 Q. And what was the price of oil at Hyannis in January, 1906?—A. 11½ cents a gallon.

Q. And is it not true that the price ticket which Hisgen published in the Boston paper, showing the Hyannis price at 11½, with the last figure of the year omitted, and in which newspaper publication he undertook to compare the Hyannis price with the Springfield price—is it not true that the Hyannis price was the 1906 price and not the 1907 price?—A. It is true.

Q. And did he not in that interview undertake to compare a January, 1906, price at Hyannis with a January, 1907, price at Springfield?—A. He did.

Q. And in order to substantiate his statement, is it not true that he caused the last figure of the year to be covered by his picture?—A. Somebody did.

Mr. MORRISON. Before the answer, I want to object to that as leading and incompetent.

Q. Now, the price ticket which Mr. Hisgen caused to be published, showing an 11½-cent price at Hyannis, as of January, 1907, was a price ticket to H. F. Foster, 55 gallons at 11½ cents, was it not?—A. It was.

Q. Is it or is it not true that that price ticket which he caused to be published was the No. 294 of defendants' Exhibit 82?—A. Yes, sir.

Q. Mr. Hisgen, in his testimony at Albany, testified, as shown on page 1851 of volume 4 of the printed records, that the Hyannis
7986 ticket which he paralleled with the Springfield ticket of January 25, 1907, was dated January 13, "190," and showed a sale of 55 gallons at 11½ cents. That is the 294 of defendants' Exhibit 82, is it not?—A. Yes, sir.

Q. So that what Mr. Hisgen did in that newspaper publication was to claim that the defendant was selling oil at Hyannis, Massachusetts, at 11½ cents on January 13, 1907, while it was selling oil at Springfield, Massachusetts, on January 25, at 7 cents, was it not?

Mr. MORRISON. That is objected to because it is leading and incompetent, and calls for a conclusion of the witness as to what the exhibits themselves (if this paper shall be offered in evidence) are the best evidence.

A. It was.

Q. As a matter of fact, however, what he did was to cause to be concealed the figure "6" of the "1906," on the Hyannis ticket, leaving only "January 13, 190," showing a Hyannis price of 11½ cents and then institute a comporison between that 11½-cent Hyannis price of 1906 with the 7-cent Springfield price of January 25, 1907; isn't that so?—A. Yes, sir.

Mr. MORRISON. That is objected to as leading, and as calling for the conclusion of the witness upon a subject about which he does not appear to have any knowledge whatever.

Q. Now, what was the price at Hyannis in January, 1907?—A. 10 cents.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 82.

7987 Recross-examination by Mr. MORRISON:

Q. Were you present at this newspaper interview that you have been testifying about?—A. No, sir; I was not.

Q. Do you know where it took place?—A. I do not.

Q. Do you know whether there was any newspaper interview?—A. I know that an interview was published in the newspaper.

Q. All you know about that is what you saw, then, in the newspaper?—A. Absolutely.

Q. Have you seen that paper lately?—A. No, sir.

Q. When did you last see the paper that has that alleged interview in?—A. I think immediately after the publication of the issue.

Q. And you haven't seen it since?—A. Not to my recollection.

Q. What paper was it published in?—A. The Boston American.

Q. You were not present, I assume, when the article was set up?—A. No, sir.

Q. Nor when the picture of Mr. Hisgen was put at the head of it or as a part of it?—A. No, sir.

Q. You don't know, then, whether Mr. Hisgen caused the picture of his face to cover any part of the date?—A. I do not.

Q. The truth is, all you know about it is what you learn from comparing the exhibit here, No. 82, with your recollection?—A. No, sir.

7988 Q. Just wait a moment now. With your recollection of what was contained in a newspaper article which you saw sometime in 1907?—A. No, sir; that is not true.

Q. What more do you know about it?—A. When that article was published, I immediately sought in our records the duplicate of the ticket that was published, and found that it was dated 1906 instead of 1907, as the paper would indicate from the article following the illustration.

Q. How do you know that this is a duplicate of the sale ticket to which Mr. Hisgen referred?—A. Because the ticket published in the paper was the original of this ticket No. 294–B, and from our records I get the duplicate. The original was secured by Mr. Hisgen or somebody from the customer, Mr. Foster, to whom we made the sale. Both tickets were made out by our tank-wagon driver at the time delivery was made, in duplicate, the duplicate coming to our office and the original being given to the merchant. This is the duplicate of that ticket.

Q. And you got that from the files of your office?—A. Yes, sir.

Q. That was returned to you?—A. Yes, sir.

Mr. ROSENTHAL. That is, the duplicate?

WITNESS. That is, the duplicate.

Q. And the way you identify it, I suppose, is by the language of the ticket itself?—A. No, sir; by the number.

Q. By the number?—A. Yes, sir; and the date. Well, the number.

7989 Q. Have you any tickets here to show what oil was selling for in Hyannis in 1907?—A. No, sir.

Q. The corresponding date?—A. No, sir.

Q. Well, you have tickets in your office, haven't you?—A. Yes, sir.

Q. Why didn't you bring them in?—A. It never occurred to me. I supposed that my testimony relative to that subject would be sufficient.

Q. You are simply testifying from what you read from some ticket or from some books; you were not present when any sale was made?—A. No, sir.

Q. Do you know what oil sold for in Hyannis during the entire month of January, 1907?—A. I do.

Q. For what price?—A. Ten cents per gallon.

Q. Ten cents, for the whole month?—A. Yes, sir.

Q. Do you know what oil was selling for at Springfield at the same time?—A. I do not.

Q. Don't you know that oil was selling in Springfield, at the same time, at 7 cents?—A. I do not.

Q. Now, if that appears among the exhibits in this case to be the fact, can you account for that difference?—A. No, sir.

Mr. ROSENTHAL. It does not appear in this case, Mr. Morrison, from any exhibit, does it?

Mr. MORRISON. Mr. Durand says that it does.

Mr. CRAWFORD. For 1906.

Mr. DURAND. Mr. Hisgen testified to that.

Mr. ROSENTHAL. Oh, Mr. Hisgen testified to it, yes. But when you say it appears from the exhibits in this case, it does not.

Mr. DURAND. I didn't mean that it was in a typewritten exhibit.

Mr. ROSENTHAL. Is there any exhibit in this case covering the Springfield 1907 price?

7990 Q. Regardless of the question as to whether or not there is an exhibit in this case, you would still be unable to account for that difference, if such a difference exists?—A. Yes, sir.

Q. Now, you were selling oil at Hyannis in 1906 for 11½ cents, weren't you?—A. Yes, sir.

Q. Now, then, it does appear, from an exhibit in this case, that you were selling it at Springfield, at the same time, and during that entire month, for 8½ cents a gallon—a difference of 3 cents a gallon. Can you account for that difference?—A. No, sir.

Q. You had a good deal more competition in Springfield than you had in Hyannis, didn't you, at that time?—A. I don't know anything about it. I do not know anything about the Springfield situation.

Q. Is there any difference in the cost of marketing oil in Hyannis than there would be in Springfield?—A. The cost is high in Hyannis; I don't know what it is in Springfield.

Q. What makes it high in Hyannis?—A. The deliveries there cover long distances, and the deliveries are comparatively small.

Q. Now, let's go over to Fall River. You know where that is?—A. Yes, sir.

Q. Now, oil was selling in 1906, during the months of January, February, March, April, and May for 11 cents a gallon, and it
7991 was selling, as I understand you, in Hyannis, for 11½ cents. Can you account for that difference?—A. No, sir.

Q. Can you account for a difference of 2½ cents between the price of oil in Springfield and the price of oil in Fall River?—A. No, sir.

Q. You can't see any reason for that distinction, can you?—A. I don't know anything about it.

Q. Now, it appears from the exhibits in the case that you had no competition at Fall River at that time.

Mr. ROSENTHAL. Where does that appear?

Q. And that you were selling oil during the month of January for 11 cents a gallon in Fall River, and it appears from the exhibit that there was considerable competition in Springfield, and that you were selling it there at 8½ cents.

Mr. ROSENTHAL. That doesn't appear from the exhibits.

Q. Can you account for that upon any other theory than that you had competition in one place and that you didn't have it in the other?

Mr. ROSENTHAL. Are you predicating that upon petitioner's Exhibit 635?

Mr. MORRISON. Yes.

Mr. ROSENTHAL. Then, I shall have to challenge the statement that it appears from that exhibit that there was no competition at Fall River. The "00" in red figures, as I understand it, does not indicate that there was no competition; it indicates that there were no sales of competitors that were reported to the Standard Oil offices, that is all.

A. I know nothing about the situation at either place.

7992 Q. How far are those towns apart?—A. I do not know.

Q. Now, it appears that in the year 1905 the competition in Springfield was 30.5 per cent, and that in Fall River there was no competition reported; and that during the month of January of that year you were selling oil at 8 cents a gallon in Springfield and 10½ cents a gallon in Fall River. Can you account for that difference?—A. I don't know anything about it.

Q. Which is the larger town?—A. I do not know.

Q. How far is Fall River from Boston?—A. About 50 miles.

Q. How far is Springfield from Boston?—A. About 100 or 125 miles, perhaps.

Q. And they are on the same line of railroad, are they not?—A. No; I think not.

Mr. MILBURN. The New York, New Haven & Hartford.

WITNESS. Yes. One is on the Boston & Albany.

Q. Now, I want to call your attention to some prices in territory with which you are familiar. It appears from the exhibit referred to that in the month of December, 1904, oil was selling in Springfield at 8 cents a gallon, and that in Boston it was selling at 11 cents. It also appears from the same exhibit that the percentage of competition in Springfield was 21.7 per cent, and in Boston was 11.3 per cent. Can you account for that difference in the price of oil in those two cities during that month?—A. No, sir.

7993 Q. It appears from this same exhibit that you were selling at a loss in Springfield during that same month, and at a profit in Boston during the same month. Can you account for selling at a loss in one place and a profit at the other at the same time?—A. No, sir.

Q. Now, the difference in the margins for that month, between Boston and Springfield, is a loss of .88 cent in Springfield and a profit of 2.82 cents a gallon in Boston. Can you account for that difference?—A. No, sir.

Q. I want to call your attention now to the month of January, 1903, and to the prices in the city of Springfield and the city of Fall River. Oil was selling during that month in Springfield for 9 cents

a gallon, and it was selling in Fall River for 12¼ cents a gallon. Can you account for that difference?—A. No, sir.

Q. There was a loss in Springfield of .88 cent on every gallon that was sold during that month, and there was a profit of 3.42 cents on every gallon that was sold in Fall River. Can you account for that great discrepancy?—A. I don't know anything about it.

Q. It appears from this exhibit, in reference to those towns, that there was no competition whatever reported from Fall River, that from Springfield there was a competition of 13.9 per cent. Would that explain it to you?—A. No, sir.

By Mr. ROSENTHAL:

Q. Were you ever in charge in Springfield?—A. No, sir.

Q. Was that ever in any district or division of which you were manager?—A. No, sir.

7994 Q. Do you know anything about local conditions there?—A. Nothing whatever.

Q. Have you any idea of what it was that fixed the price at Springfield?—A. No, sir.

Q. And is the same true of Fall River?—A. Yes, sir.

Q. Was that out of your territory?—A. Yes, sir.

Q. Out of your division?—A. Yes, sir.

Q. You know nothing about the conditions there?—A. Absolutely nothing.

By Mr. MORRISON:

Q. Well, you are pretty well posted, aren't you, in the oil business?—A. Not very.

Q. How long have you been in it?—A. 19 years.

Q. And you haven't learned much about it yet?—A. No.

Q. Is that the reason—your lack of knowledge of the business in which you are engaged—is that the reason that you are not able to explain these differences in figures?—A. It takes all my time to look after the business over which I have supervision.

Q. Well, that is the oil business, isn't it?—A. Yes; but not in that field that you are talking about.

Q. As a practical oil man having charge of the sales department, don't you know that the reason of these discrepancies to which I have called your attention is the fact that there is competition in one place and either none at all or very much less in the other place?—A. No, sir.

7995 Q. Don't you know that there can not be a difference of 2¼ and 3 cents a gallon in those towns, so near together, unless that price is influenced by the lack or the presence of competition?—A. Not necessarily.

Q. Tell us, if you can, what else under the sun could have made that difference but this question of competition.—A. I wouldn't attempt to tell you.

Q. You have been in the oil business all these twenty years. Can't you account for that?—A. Not in the localities to which you refer.

Q. Oh, yes; but how far away from them?—A. Well, they are far enough from me not to know anything about them.

Q. 50 and 100 miles away from you?—A. Yes.

Q. You at one time were manager at Albany?—A. Yes, sir.

Q. Did your jurisdiction extend over into Massachusetts at all?—A. Into North Adams only.

Q. But you did have a part of Massachusetts?—A. Yes, sir.

Q. Do you know where the oil comes from that goes to Springfield and Fall River?—A. I do not.

Q. Haven't the slightest idea about that?—A. Not the slightest; no, sir.

Q. Is Worcester in your territory?—A. No, sir.

Q. How far is that from Boston?—A. About 40 miles.

Q. The exhibit shows that the same condition existed, substantially, at Worcester as at Fall River and Springfield. You can't account for any difference in the prices at Worcester and
7996 the prices at Springfield?—A. No, sir.

Q. Or Boston?—A. No, sir.

Q. Do you know how the oil is gotten over to Worcester?—A. I do not; not all of it; no, sir.

7997 ARNOLD DOANE, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is your full name?—A. Arnold Doane.

Q. Where do you live?—A. Yonkers, New York.

Q. How long have you lived there?—A. About 17 years; a small break in it.

Q. How big a town is Yonkers?—A. About 80,000.

Q. What is your business?—A. Tank-wagon driver, Standard Oil.

Q. Standard Oil Company of New York?—A. Yes, sir.

Q. How long have you been in that business?—A. All of my time in Yonkers.

Q. Is Yonkers on the Hudson?—A. Yes, sir.

Q. How far is it from Albany?—A. I don't know.

Q. Is it in the Albany division? Do you know anything about that?—A. I don't know.

Q. To whom do you report as tank-wagon driver?—A. To the manager there—Mr. Bartels.

Q. The manager at Yonkers?—A. Yes, sir.

Q. And you don't know to whom he reports?—A. I don't know anything about that.

Q. Do you know a man by the name of J. B. Bonnett?—A. Yes, sir.

Q. He is dead now, is he not?—A. Yes, sir.

7998 Q. What was his business?—A. Grocer.

Q. Where was his business located?—A. At Hastings-on-the-Hudson.

Q. How far from Yonkers?—A. About four miles.

Q. Did you ever sell him any oil?—A. Yes, sir.

Q. When?—A. Almost every week for several years until he died.

Q. During what years?—A. I don't remember the years, but most every year I sold him some while he was in business. I don't remember the year.

Q. 1901, 1902, and 1903?—A. 1902 and 1903, I think, and 1904.

Q. And before that?—A. Yes, sir.

Q. Did you ever hear of Hisgen Bros.?—A. Yes, sir.

Q. Do you know of their having sold any oil to Mr. Bonnett at Hastings?—A. Sold him some, I believe.

Q. Do you remember about when that was?—A. I don't know the years. Somewhere in 1901, 1902, and 1903; I don't remember now.

Q. And in what form was that oil sold?—A. In barrels.

Q. Do you remember how many barrels?—A. I know he had one order of ten barrels; that is all I know.

Q. One order of ten barrels that Bonnett bought from the Hisgens?—A. Yes.

Q. Do you know at what price that was purchased, as compared with the Standard Oil price at that time—whether it was higher or lower?—A. It was a lower price. I don't remember the price.

7999 Mr. MORRISON. That is objected to, because it is apparent that this witness doesn't know anything about it.

Mr. ROSENTHAL. Oh, "he learned it in the course of his trade."

Mr. MORRISON. It does not appear so yet.

Q. Did you call upon Mr. Bonnett after he had made that purchase of ten barrels from the Hisgens?—A. Yes, sir; I called upon him every week on my regular route.

Q. And what happened with respect to those barrels in any subsequent sales that you may have made?—A. Well, I filled a barrel now and again for him during the time that he was using up that ten.

Q. You called upon him, as I understand it, from time to time thereafter to solicit his business; is that right?—A. That is right.

Q. After Hisgen Bros. had sold him these ten barrels of oil?—A. Yes, sir.

Q. Did you at any time thereafter make any measurements of the barrels that contained the oil that Hisgen had sold him?—A. Yes, sir; the first barrel I filled after he bought this order.

Q. What sized barrels were they or did they purport to be?—A. One barrel was 50, the only one that I remember of—50 gallons gauge.

Q. Did you thereafter fill that barrel which purported to contain 50 gallons?—A. Yes, sir.

Q. What did you find?—A. I found that it didn't hold 50;

8000 that it was about a gallon or two short of 50 gallons.

Q. Did you call Mr. Bonnett's attention to that?—A. Yes, sir; he was with me when I filled it.

Q. He was with you when you did it?—A. Yes.

Q. What then happened?—A. He used some strong language, and said that he wouldn't buy oil of the other man at a cheaper rate and

then get short measure for it; that he would rather buy from us at a higher rate.

Q. What I mean to say is, did he thereafter purchase exclusively from the Standard?—A. Yes, sir; ever since, to my knowledge.

Q. And refused to purchase from Hisgen any more?—A. Yes, sir.

Q. How were those Hisgen barrels marked?—A. With stencil—"Hisgen," "Four Brothers."

Q. With respect to their gallonage capacity?—A. Marked with figures.

Q. How?—A. On the end.

Q. What figures?—A. The tare, and then the gallonage on the other.

Q. What were the figures?—A. "50."

Q. In your sales to Bonnett thereafter did you at any time cut the regular price in order to induce him to become again a customer of the Standard?—A. No, sir.

Q. Were your sales made at the regular prices?—A. Yes, sir.

Q. Did you make Bonnett any special price to get him to buy from you after the Hisgens had sold him?—A. No, sir.

8001 Q. At no time?—A. I never changed the price at all.

Q. Was Bonnett the only customer upon your route that the Hisgens sold?—A. I believe so; I don't remember now.

Cross-examination by Mr. MORRISON:

Q. You didn't see the Hisgens down there at this store, did you?—A. I never saw them.

Q. What was the mark that you say was on the head of this barrel?—A. The name?

Q. Yes.—A. It was "Hisgen Bros.," as near as I can remember.

Q. Was it "Hisgen Bros." or was it "Four Brothers?"—A. "Four Brothers" was there.

Q. Which was it?—A. "Hisgen" was there, the name "Hisgen;" I don't know whether it was "Hisgen Bros." But "Four Brothers" was there also.

Q. So that the name "Hisgen," then, was on the barrel, and "Four Brothers?"—A. And "Four Brothers."

Q. Do you know where they got that barrel?—A. I knew that they got it from Hisgen Bros.—I was told.

Q. Do you know where the Hisgens got it?—A. I don't know anything about that.

Q. Do you know whether they manufactured it themselves, or whether they bought it in the market?—A. I don't know anything about it.

Q. Have you ever handled barreled oil yourself?—A. I have filled barrels, that is all; I have filled them out of the tank wagon.

8002 Q. Do you fill other people's barrels, or does the Standard have barrels that you fill?—A. I fill the Standard's barrels as well as——

Q. Do you know where they got their barrels? Do you know where the Standard get their barrels? Do they manufacture them, or do they buy them in the market?—A. I don't know anything about it.

Q. What did you measure this barrel with?—A. 5-gallon cans.

Q. Just describe the can you used.—A. An ordinary 5-gallon can, Standard Oil can.

Q. A can with a sort of a spout or collar around the edge?—A. Yes; a large neck to it, and handle, and spout.

Q. In order to get a gallon in, do you have to fill up in the neck there, to make a gallon?—A. Fill it right up to measure, right up to the 5-gallon mark.

Q. Did you measure it with oil or with water?—A. With oil.

Q. Was this a 5-gallon can that you used?—A. Yes, sir.

Q. There is a mark near the top of the can that shows when there is 5 gallons in the can, isn't there?—A. Yes.

Q. If you get above that a little, you get more than 5 gallons, don't you?—A. Yes; if it flows over; you can get more than 5 gallons by flowing it over.

Q. Do you mean if you flow it over you don't get your oil into your barrel—if you flow it over the can?—A. No; there is always a little in the top of the can—the spout.

8003 Q. You can put more than 5 gallons in one of those cans, can't you, without flowing over the can at all?—A. Not more than a spoonful or two.

Q. Just a spoonful?—A. Just a very little; not enough to notice it.

Q. Where did you get this can?—A. One that I had been using on the road.

Q. Was it furnished you by the Standard Oil Company?—A. Yes, sir.

Q. You didn't gauge that barrel with a measure, did you, with a gauge?—A. No; I did not.

Q. That is the way barrels are measured, isn't it—to ascertain the capacity?—A. No, sir; not from the tank wagon.

Q. No; not from the tank wagon, but you know that there is a way, do you not, of gauging and measuring a barrel so that you can come to a mathematical certainty as to just what that barrel holds?—A. I didn't measure it that way; I measured it with the can.

Q. I know. But my question is not how you measured it, but whether there is a method of measuring that will show to a mathematical certainty just what the barrel holds?—A. There may be, I don't know.

Q. Now, you know, don't you, that in the sales of oil you often overrun and sometimes you come under the measured-out amount that you think you are selling; isn't that so?—A. Not in measuring 50 gallons out of cans; it always comes out good.

8004 Q. Don't you often run short and don't you sometimes run over in your tank wagon?—A. Very little.

Q. What do you mean by "very little?"

Mr. ROSENTHAL. Run short of what, and run over what?

Mr. MORRISON. Oh, the witness understands.

Mr. ROSENTHAL. Well, the court may not. I don't.

Q. What is your answer?—A. We don't run over at all, just measure out what is called for, and that is all there is to it.

Q. You sell from tank wagon, don't you?—A. Yes, sir.

Q. You measure into your tank wagon a certain number of gallons, don't you, when you start out in the morning?—A. Yes.

Q. You keep a record of what you sell, don't you, during the day?—A. Yes, sir.

Q. Now, does that always compare accurately with the amount that you had in your tank?—A. Just about. There may be a very little; not enough to notice it at all.

Q. When you get back at night if there is any oil in your tank do you measure or ascertain in any way how much you have in your tank?—A. Yes.

Q. After you have sold out during the day?—A. Yes, sir.

Q. What do you do that for?—A. To see what is brought back; to account for the sales.

Q. You know what is brought back, don't you, if your measure is absolutely correct?—A. Yes; we know it.

8005 Q. What is the use of measuring it when you get back at night if you know that your measure is absolutely correct?—A. I know it, but the other people don't know it.

Q. What other people don't know it?—A. The people that are over me.

Q. Do you make a daily report to anybody of the amount of oil that you take out in the morning, and the amount you have sold, and the amount you have when you get home at night?—A. Yes, sir.

Q. And you make these measurements yourself, do you?—A. Yes, sir.

Q. How do you measure it when you get home at night? Do you draw it out of your tank and measure it?—A. Sometimes.

Q. When you don't do it that way, how do you do it?—A. With a gauge, a stick.

Q. You have a stick by which you gauge it?—A. Yes, sir.

Q. Did you measure more than one of these barrels?—A. Not at that time.

Q. All you know about this question as to whether that was Hisgen's barrel is what Bonnett or somebody told you?—A. I saw his name on the barrel, and he told me it was theirs.

Q. And you saw the names on the barrel?—A. Yes, sir.

Q. That is all you know about it?—A. That is all I know about it—and what he told me.

Q. You say that this was a 50-gallon barrel?—A. It was marked 50 gallons.

Q. How was the barrel marked 50 gallons; printed on, written on, stamped on, or how?—A. Printed on with a stencil.

8006 Q. Did you keep any record of that measurement?—A. Yes, sir; I did, and handed it in.

Q. Where is it?—A. I don't know anything about it.

Q. What did you do with it?—A. It was handed in to the office.

Q. And you have never seen it since?—A. No, sir.

Q. Where is it now?—A. I don't know anything about it.

Q. When was it that you made that measurement?—A. I don't know the year; '1, '2, or '3.

Q. You said it was 1901, '2, or '3?—A. Yes.

Q. That is as near as you can come to it?—A. As near as I can remember.

Q. Was that the only barrel you measured that year?—A. We every day mostly measure a barrel; measure a barrel almost every day.

Q. Your own barrels, or the barrels of other people that are selling in your territory?—A. Mostly our own barrels.

Q. What do you have to measure them for? Do they differ in size?—A. In filling the barrels we always put 50 gallons in, in filling from the tank wagon.

Q. You say you measure the barrels every day. What do you mean by that?

Mr. CRAWFORD. He didn't say that, Mr. Morrison.

A. I measure the oil that I put in; not the barrels.

Q. You measure the oil that you put in every day?—A. Yes.

Q. And a barrel that is marked 50 gallons always holds
8007 exactly 50 gallons?—A. More than 50 gallons.

Q. And this is the only instance in which you ever found that it didn't hold 50 gallons?—A. It is the only barrel I ever.

Q. Now, you succeeded in getting Mr. Bonnett's trade back a didn't you?—A. Yes, sir.

Q. And you got it solely on that question of measurement, didn't you?—A. I believe so.

Q. You satisfied him that he wasn't getting full measure?—A. He saw it himself. I didn't satisfy him; he saw it himself.

Q. He saw what?—A. He saw the short measure that was in the barrel.

Q. He saw you measure it?—A. Yes.

Q. Now, did you take this barrel and then fill it from your 5-gallon measure?—A. Yes.

Q. Drawing it from your tank?—A. Filled it full; yes, sir.

Q. You drew it from the tank, in your 5-gallon measure?—A. Yes, sir.

Q. Did you have your tank right up close to the barrel?—A. No, sir; I did not. Within a few feet of it.

Q. Did you set it out on the walk outside and drive up along close to it?—A. No; it was in the yard, close to the barrel.

Q. You drove right up alongside of it?—A. Yes, sir.

Q. Then you drew the oil from your tank, and then you poured it into the barrel?—A. Yes, sir.

Q. How much did you say it was short?—A. 1 or 2 gallons.

Q. Which was it—1 or 2?—A. I don't know.

8008 Q. Well, there is a good deal of difference, isn't there?—A. Well, there may have been 1 and there may have been 2.

Q. And there might have been 3, might there not?—A. There was enough there for him to talk a lot about it, anyway.

Q. Well, are you sure it wasn't more than 2?—A. I don't think it was.

Q. Well, are you sure about it, now?—A. No; I am not sure.

Q. You are not sure. The fact is, you are not sure how much the barrel did hold, then, are you?—A. I know by the gauge of the barrel, that is all.

Q. You don't know whether it held 47, 48, or 49 gallons according to your measurement, do you?—A. It didn't hold 50 according to my measurement.

Q. I am not asking you that. You don't know whether it held 47, 48, or 49, do you?—A. No; I don't know. I know it didn't hold 50.

Q. It might have been 48½, mightn't it?—A. Well, it might have been about that.

Q. The truth is, your recollection is indistinct as to the amount of oil that the barrel actually held?—A. Well, within half a gallon; yes.

Q. All you remember is that it was short?—A. It was short.

Q. When you come to get the amount that it was short, you

8009 haven't very much recollection about it, have you?—A. Well, between 1 and 2 gallons; that is as near as I can remember.

Q. And that took place at least five years ago, taking the last year that you named—1903?—A. About that; five or six years.

Q. How long have you been selling oil for the Standard Oil Company?—A. About seventeen years.

Q. And have been a peddler all the while?—A. Been what?

Q. You delivered to the consumer, I mean by "peddler?"—A. Yes; all the time.

Q. Are you selling on commission, or do they pay you a stated salary?—A. A salary.

Q. Have you ever had anything to do with any other branch of the oil business?—A. No.

Q. You never worked for any other company besides the Standard?—A. No other oil company.

By Mr. ROSENTHAL:

Q. You don't mean that you were a peddler. You were a tank-wagon driver?—A. A tank-wagon driver.

Q. This barrel, as I understand it, was a barrel that was pointed out to you by Mr. Bonnett as one of the barrels which the Hisgen Bros. had sold him as containing 50 gallons of oil?—A. Yes, sir.

Q. And the measurement which you made was conducted right in the presence of Mr. Bonnett?—A. Yes, sir.

Q. He seeing just what you did?—A. Yes, sir.

Q. And it was done at his request, was it not?—A. Yes, sir.
8010 Q. And it was when he discovered it was short that he said he would no longer trade with Hisgen Bros.?—A. Yes, sir.

By Mr. MORRISON:

Q. You say it was done at his request. How did he happen to request you to measure that barrel?—A. The same as all grocers; to see what they get.

Q. Does every man request you to measure a barrel when he buys a barrel of oil from some other dealer besides you?—A. He requests me to put 50 gallons in, which is the usual thing—to put 50 gallons in a barrel.

Q. The question is, How did he come to ask you to measure that barrel? You have just said that it was done at his request.—A. He told me to put 50 gallons in; that was his request.

Q. Had you told him, before that, that probably it was short?—A. No; I didn't know anything about it.

Q. You had no knowledge of it?—A. No knowledge of it being short.

Q. Now, I think you said a little while ago that you sold him this oil and got him back to be your customer again, because this barrel was short.—A. So I did, after filling that barrel.

Q. Well, you must have filled the barrel, then——

Mr. ROSENTHAL. He didn't say he sold this oil. He got him back as a customer thereafter.

Q. You got him back by showing him that that barrel was
8011 too small, didn't you?—A. Yes, sir.

Q. And didn't hold 50 gallons?—A. Yes, sir.

Q. You showed him it was too small, by filling the barrel?—A. Yes.

Q. Had you sold him the oil before you commenced to fill the barrel?—A. No, sir.

Q. What did you put it in there for?—A. Because he told me to.

Q. What for?—A. He wanted to buy the oil. I visited him every week, and he took this oil from us. He had been an old customer, and took this one barrel to sell with the other, and paid us a higher price for it.

Q. Do I understand you that he bought this barrel of oil which you poured into the Hisgen barrel before he knew that that barrel was short?—A. Yes, sir.

Q. So you didn't get him back by showing him that there was short measure?—A. I showed him right afterwards.

Q. You showed him afterwards?—A. We held him right after that—held the customer.

Q. You held his trade right after that?—A. Yes; his trade.

Q. Then, what you mean when you say that you got him back by showing that the barrel was short is that you got him back before that, and that you held him afterwards; now, that is all you mean, isn't it?—A. That is all that I know.

Q. How do you know that this can you had held just 5 gallons?—A. Well, the police inspectors came around and inspected it.

8012 Q. When was that can inspected?—A. I don't remember.

Q. Did you ever see it inspected?—A. Yes, sir.

Q. Who inspected it?—A. The police of Yonkers.

Q. What was his name?—A. I don't know.

Q. Did he give you any certificate?—A. He didn't give it to me. It was inspected for the company, not for me.

Q. Were you present?—A. No, sir.

Q. Then you don't know anything about it, do you?—A. No; I don't.

Q. What time in the year was it that you made that measurement?—A. In the winter time, I think. I wouldn't be sure. I think it was the winter.

Q. You think so? Don't you know whether it was cold weather or warm weather?—A. I am not sure.

Q. Did you have an overcoat on?—A. I don't remember.

Q. Did you have on any coat at all?—A. I don't remember.

Q. Are you now prepared to swear that the word "Hisgen" was stamped on that barrel anywhere?—A. Yes, sir.

Q. You are just as positive of that as you are of anything else?—A. Yes, sir.

Q. How was it—printed on there, or stamped on there?—A. Stamped on with a stencil.

Q. And about that you can't be mistaken, can you?—A. No, sir.

8013 EPHRIAM HAFLEY, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is your full name?—A. Ephriam Hafley.

Q. Where do you live, Mr. Hafley?—A. Albany.

Q. How long have you lived there?—A. Five years.

Q. What is your business?—A. Salesman for the Standard Oil Company.

Q. To whom do you sell generally?—A. To dealers.

Q. At Albany?—A. At Albany, Troy, and suburbs.

Q. You have been doing that for five years?—A. Yes, sir.

Q. Do you know a grocer by the name of Winnie at Albany?—A. Very well.

Q. How long have you known him?—A. About four years.

Q. Was he ever a customer of yours, of the Standard Oil Company?—A. Only part of a customer; that is, in specialties.

Q. From whom else was he buying while he was buying from the Standard?—A. Buying what?

Q. Oils.—A. Well, I am the specialty salesman in our field.

Q. You don't sell refined oils; you sell the axle greases?—A. Yes, sir.

Q. You are the only Hafley that works for the Standard Oil Company at Albany, are you not?—A. Yes, sir.

8014 Q. And you are the only Hafley that has been there during the five years that you have been there? Isn't that so?—A. Yes.

Q. Did you ever call upon Mr. Winnie with respect to or for the purpose of selling him refined oil?—A. I did, sir.

Q. About when was that?—A. Sometime in 1906.

Q. Was that the only time?—A. As near as I can tell. I called on him once or twice in 1907, I think.

Q. Was he buying refined oil from Hisgen Bros. at the time that you called upon him?—A. I was so informed.

Q. And you called upon him for the purpose of selling him refined oil, as a representative of the Standard, did you?—A. Yes, sir.

Q. Did you at that time offer to cut the regular Standard price, the then prevailing Standard price, in order to get his business back?—A. Never.

Q. Did you say to him at that time, "We can do better by you" (referring to your ability to do better by him than Hisgen Bros. were doing)?—A. I don't recall any such statement.

Q. Did you say anything like that, in that conversation or any other conversation, that you can recall?—A. I don't remember of such.

Q. Well, did you or did you not say it?—A. I did not.

Mr. MORRISON. Well, he has answered the question, that he doesn't remember.

Q. Did you ever at any time offer to sell oil to Mr. Winnie
8015 at a better price than the price he was paying the Hisgens?—A. No, sir.

Q. Did you ever offer to sell him oil at a price lower than the prevailing Standard price at that time?—A. No, sir.

Q. Did you ever have any authority, during the five years that you have been with the Standard, to offer Winnie or anybody else a price lower than the prevailing Standard price?—A. No, sir.

Q. Are you not expressly prohibited from doing that?—A. I am.

Cross-examination by Mr. MORRISON:

Q. You didn't make any suggestion whatever about a rebate or drawback to Winnie, did you, in case he bought oil of you?—A. No, sir.

Q. You never did such a thing in your life to anybody, did you?—A. No, sir.

Q. You were quite anxious to get Mr. Winnie's trade, weren't you?—A. Very much.

Q. You did have a conversation with Mr. Winnie, didn't you?—A. Yes, sir.

Q. Now, will you tell me when that was?—A. Sometime in 1906. What month I can't say.

Q. What did you say to him and what did he say to you in that conversation?—A. I asked him the question—I don't know just what words I used—relative to buying oil of us.

8016 Q. Did you say to him, "You used to do business with me when there was no opposition here, and why can't you do it now?"—A. I didn't know of that fact.

Q. Didn't know of what fact?—A. Of his doing business with us.

Q. Hadn't he done business with you before that?—A. Not that I know of. Probably before my time.

Q. Then, as I understand you now, that was the first business transaction that you had with Mr. Winnie?—A. Unless I sold him some other products.

Q. I mean in reference to oils.—A. To oils.

Q. Did you take an order from him that day?—A. Not that I know of; no, sir.

Q. Do you mean that you don't remember whether you did or whether you did not?—A. I am sure that I did not.

Q. Did you succeed in selling him any after that?—A. I know that he did buy after that.

Q. Well, did you solicit him, or somebody else solicit him?—A. He must have telephoned or written for the goods.

Q. That is the only transaction you ever had with him, then, as I understand it?—A. Oh, I have called on him frequently; that is, regarding specialties.

Q. But never made a sale to him in your life?—A. Not on oil; no, sir.

Q. I am talking about oil now entirely. Now, as that is but one single conversation that you had upon that subject, perhaps you can tell just what you said to him and what he said to you; can't you?—A. Relative to what?

8017 Q. To the sale by you and the purchase by him of oil.—A. I never sold him any oil.

Q. You talked with him about it, didn't you?—A. Oh, certainly.

Q. What did you say and what did he say?—A. As near as I can recollect, he said to me that "it would be useless for me to take up any of your time." I said, "Why?" "You can't sell it to me low enough." Said I, "We can't?" Said he, "No." Said I, "Then, you are buying it for less than 7." That was the open market price. He said, "Yes." I indicated with my finger if that would reach him, so as to ascertain what he was buying oil for, and he said that wouldn't be considered; he said that would not be low enough. By his remark I took it for granted that he was buying for less than 6½ cents.

Q. No, I am asking you for conversations, not what you took for granted. Then, you did hold up your fingers and make some sort of a demonstration, did you not?—A. I am guilty.

Q. Can you tell just what you did do?—A. Yes.

Q. Well, do so. [Witness indicates.]

Q. Now, you held up your left hand, is that right?—A. Well, either left or right, I don't remember which.

Q. With the index finger sticking up?—A. Probably.

Q. And then you took your other finger and crossed it?—A. That is the idea.

Q. What did you mean by that, and what did you intend he
8018 should understand?—A. To learn whether he was buying it for that or not.

Q. Oh, you were simply putting the question to him?—A. That is the idea.

Q. You were not making him an offer at all?—A. No, sir.

Q. He had told you, hadn't he, what he was selling for?—A. What he was buying it for do you mean?

Q. Buying it for, yes.—A. No.

Q. So you didn't know; and instead of asking him a question outright, "What are you paying the Hisgens for oil?" you went through this demonstration with your fingers, that you have told us about?—A. Yes, sir.

Q. Did you say anything while you were doing that, or was that purely pantomime?—A. Just simply smiled.

Q. Why did you smile?—A. Because it indicated what he was paying for oil.

Q. Well, you indicated it, didn't you?—A. Yes, certainly.

Q. And did he make any reply to that indication which you made?—A. He simply said it would be useless for me to take up any more of his time on that question.

Q. What were you selling oil for at that time in Albany?—A. Seven cents.

Q. What was the prevailing price?—A. Seven cents.

Q. Locate the date of that conversation, as nearly as you can.—A. I can't recall it.

Q. What year?—A. Sometime in 1906.

8019 Q. What month?—A. I don't know whether it was in the fall or in the spring.

Q. I think you said that you don't know whether it was in the fall or in the spring?—A. I can't recall it; no, sir.

Q. Do you know whether the prices were different in the fall than they were in the spring of that year?—A. I couldn't say.

Q. Your business is principally handling other products than illuminating oil, isn't it?—A. Largely.

Q. Do they have regular salesmen in Albany who handle the oil exclusively?—A. No, sir.

Q. You are the only salesman they have there?—A. In Albany.

Q. And you confine your efforts mainly to the selling of axle grease and other products?—A. Yes, sir.

Q. How did you happen to take up the oil question?—A. Because I was interested, of course, in the——

Q. Were you sent there by anybody? Were you told by anybody to do it?—A. On my own responsibility.

Q. Were you ever told by anybody to take the matter up with Winnie?—A. No, sir.

Q. Was he the only man you talked with that day on the oil question?—A. Possibly not; no; I can't say.

Q. Did you make any sales of oil during that entire month to anybody?—A. I don't remember.

Q. Did you during the year make a sale of oil?—A. I can't recall.

8020 Q. You couldn't have been selling oil to any great extent, then, if you don't know whether you made a sale in a year or not?—A. I sell specialty goods mostly. I put my whole time, that is, most of my time, in specialty goods, selling by-products.

Q. You are going into the stores of these different dealers, one after another, day after day, and don't mention oil at all; that is true, isn't it?—A. Well, when the question arises, of course I might.

Q. How did the question happen to arise with Winnie?—A. Because I knew that he was not buying oil of us.

Q. How did you know it?—A. I was so informed.

Q. By whom?—A. By him.

Q. When, on the occasion that you went there? How did he happen to tell you that he wasn't buying oil of you? You were not selling oil?—A. Well, the oil question comes up occasionally.

Q. What brought it up on that occasion?—A. I couldn't recall.

Q. Did you know what they were selling oil for at that time?—A. Have you reference to our company?

Q. Your company, yes.—A. Seven cents; yes, sir.

Q. You said, I think, in your direct examination, that you were instructed not to give rebates; is that right?

Mr. ROSENTHAL. He never said that.

WITNESS. I never said that.

Q. You didn't say that?—A. No.

Q. In answer to a question put to you by Mr. Rosenthal when he was asking you about this conversation with Winnie, first

8021 you said, "I don't remember whether I said 'I can do better by you than the Hisgens' or not." Your next answer was, in reply to a question put by Mr. Rosenthal as to whether you did or did not, that you did not say so. Now let me know just where you want to land on that proposition. Do you swear positively that you didn't tell him that, or do you swear that you don't remember whether you told him that?

Mr. ROSENTHAL. He never said that he didn't remember whether he told him.

WITNESS. I don't remember.

Q. You don't remember what?—A. That question. I don't remember. I can't recall it.

Mr. ROSENTHAL. When you say "I don't remember that question," what do you mean by that?

WITNESS. That I ever made the remark to Mr. Winnie that I could do better by him than the Hisgen Bros. Is that the question?

Q. That is the substance of it. That gets what we want, I guess.—A. I don't recall ever making such a remark.

Q. And that is the utmost that you can say—that you do not recall it, isn't it?—A. I don't remember it; I don't recall it.

Q. Because, as I understand you, you don't pretend to remember that conversation; that is true, isn't it?—A. Yes, sir.

8022 By Mr. ROSENTHAL:

Q. Did you or did you not say to Winnie that you could do better with him than the Hisgens? Did you say that, or didn't you?—A. I did not.

By Mr. MORRISON:

Q. Well, now, what do you mean? You said to me that the best that you could do in that subject was to say that you didn't remember it.

Mr. ROSENTHAL. No, I don't think he did.

Mr. MORRISON. I think he did.

Mr. ROSENTHAL. I don't think he understood you.

Q. Do you mean to swear that you don't remember such a conversation, or that you didn't have such a conversation?—A. That I did not have such a conversation, that I did not say that to him.

Q. Are you positive about that, or is that simply your best recollection?—A. I am positive.

Q. Are you more positive now than you were a few minutes ago?—A. I will say yes, sir.

Q. You are more positive?—A. Yes, sir.

Q. What makes you more positive now than you were a few minutes ago when I was questioning you about it? Have you thought of anything now that refreshes your recollection?—A. Nothing.

Q. Well, why are you more positive?

Mr. ROSENTHAL. I suppose because you pushed him a little hard.

Q. How is that?—A. Because I am positive.

8023 Q. Well, you say you are more positive than you were a little while ago. Now, what makes you more positive?—A. I will answer that question by saying that I did not.

Q. No; you are not answering my question at all now. Just please answer my question—why you are more positive on that subject now than you were just before Mr. Rosenthal asked you the last question.

Mr. ROSENTHAL. He hasn't said that he is.

Q. What is your answer?—A. Recalling my visit at Mr. Winnie's.

Q. You have just recalled the visit, then, have you?—A. Yes.

Q. And, recalling the visit, you can remember it more distinctly now than you could a few minutes ago?—A. Yes.

Q. What do you remember now that you didn't remember then?—A. It rather refreshened my memory, if I may use the term.

Q. What was it that refreshened your memory?—A. The question.

Q. The last question Mr. Rosenthal put to you?—A. Yes, sir.

Q. That refreshed your memory?—A. Yes, sir.

Q. How long have you been in the employ of the Standard Oil Company?—A. Not quite fifteen years.

Q. In what capacity were you engaged before you took your present position?—A. The iron works.

Q. For the same company?—A. No, sir.

Q. My question was, how long have you been in the employ of the Standard Oil Company?—A. I said about fifteen years; not quite.

Q. And what was your occupation before you took your
8024 present position?—A. In the iron-manufacturing business.

Q. Were you ever a tank-wagon driver?—A. No, sir.

Q. You are the outside man that hustles for the trade, I suppose?—A. Yes.

8025 Roy S. Akin, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Rosenthal:

Q. What is your full name?—A. Roy S. Akin.

Q. Where do you live?—A. Pittsfield, Massachusetts.

Q. How long have you lived there?—A. Ten years.

Q. What is your business?—A. Special agent for the Standard Oil Company of New York.

Q. At Pittsfield?—A. Yes, sir.

Q. How much of a town is Pittsfield?—A. 25,000.

Q. And how long have you been special agent there?—A. Nine years.

Q. You have tank-wagon men working under you?—A. Yes, sir.

Q. How many?—A. Three.

Q. Where is your oil stored?—A. In steel tanks.

Q. At Pittsfield?—A. Yes.

Q. And your tank-wagon men, before they start out on their daily trips, fill up their tanks from your steel tanks?—A. Yes, sir.

Q. Fill up their tank wagons from your steel tanks?—A. Yes, sir.

Q. And then they go out and call upon the trade and sell their oil?—A. Yes, sir.

Q. How much territory do those three wagons cover?—A. Do you mean in mileage?

8026 Q. Do they go out of Pittsfield?—A. Yes.

Q. Into the neighboring country?—A. Yes.

Q. How far out?—A. They take in all the small towns south as far as Stockbridge, and go west as far as the State line.

Q. A radius of how many miles is covered by those three wagons?—A. I should say fifteen or twenty miles.

Q. And are all of your customers, each of them, called upon every day by a tank-wagon driver?—A. Not every day; once a week mostly.

Q. Those who are far away are not called upon so frequently?—A. No, sir.

Q. Is that right?—A. Yes, sir.

Q. And each one of these three drivers has a different route that he covers?—A. Yes, sir.

Q. And different routes for different days, I presume?—A. Yes, sir.

Q. They sell to the retail trade, do they not?—A. Yes, sir.

Q. Do you know a man by the name of Driscoll?—A. Yes, sir.

Q. Where does he live?—A. He lives in Pittsfield.

Q. What is his business?—A. Grocer.

Q. How long has he been in business there?—A. I don't know.

Q. How long do you know of his being in business there?—A. Nine years.

Q. Did you ever sell him any oil?—A. Yes, sir.

Q. When?—A. We sold him at different times; I can't state absolutely when.

Q. Did you sell him any oil in the year 1902?—A. Yes, sir.

8027 Q. Do you remember that particularly?—A. Yes, sir.

Q. Do you know the Hisgens?—A. Yes, sir.

Q. Had they sold Driscoll any oil?—A. Yes, sir.

Q. Now, directing your attention particularly to a sale made to Driscoll in March, 1902. Had Driscoll just theretofore been purchasing his oil from Hisgen Brothers, or some oil from Hisgens?—A. I think Mr. Driscoll bought oil of them before that.

Q. Did you have any experience with him at that time in connection with the measurement of certain barrels that had contained oil which Hisgen sold?—A. Yes, sir.

Q. Tell us about that, please. Who was with you?—A. Mr. George Tuthill, of Springfield, and Mr. Fred Launt, one of our tank-wagon drivers at Pittsfield.

Q. Who is Mr. Tuthill?—A. He is the man that I am directly under; he is the Springfield agent.

Q. And who is Mr. Launt?—A. He was the tank-wagon driver at Pittsfield at that time.

Q. Now, tell us just what took place.—A. Driscoll told me that he had bought some oil from Hisgen Brothers, and I asked him if he would care to have us measure some of the barrels, and he said yes. I went with Mr. Tuthill and Mr. Launt——

Q. Why did you ask that question?—A. Because I wanted to demonstrate to him that it was more to his advantage to buy tank-wagon oil than it was to buy barrel oil.

Q. Why? In what way?—A. That he would get more accurate measurements. He would get more accurate measurement from tank wagon than he would from barrels.

8028 Q. Now, go ahead and tell us what you did.—A. Mr. Tuthill and Mr. Launt and I went to Driscoll's store with two tank-wagon cans that I was using daily there and a rotary pump. We pumped the oil from Mr. Driscoll's barrels into the five-gallon can, and we found a shortage in each barrel. Just how much I can't say.

Q. Was it a substantial shortage?—A. Why, yes.

Q. And what five-gallon cans was it that you used in making those measurements?—A. The pair of cans I used on my wagon daily.

Q. Were they cans that had ever been gauged, tested, and sealed?—A. Yes, sir.

Q. By whom?—A. By Mr. Charles Talbot.

Q. Who is he?—A. He was sealer of weights and measures at Pittsfield at that time, in 1902.

Q. A public official?—A. A public official.

Q. You also ran a tank wagon yourself, did you not?—A. Yes, sir.

Q. When you had time?—A. It was part of my duty at that time.

Q. And these two cans were the regular cans which you used in selling your oil?—A. Yes, sir.

Q. Which you know to have been gauged and tested as you have described?—A. Yes, sir.

Q. And they were cans which you had been using in the regular course of your business?—A. I used them personally, myself.

Q. Just before that and after that?—A. Just before that
8029 and after it up to almost the present time.

Q. And they were used by you in delivering oils and measuring oils?—A. Yes, sir.

Q. For your customers?—A. Yes, sir.

Q. How recently have those cans been tested and sealed by the official sealer of weights and measures at Pittsfield?—A. They were sealed in February, 1908.

Q. And were they continuously in your possession down to that time?—A. Yes, sir.

Q. Have they in any way been altered from the time that they were used by you in measuring Driscoll's oil down to the time that they were tested by Mr. Griffin in February, 1908?—A. No, sir.

Q. Did Mr. Driscoll at that time measure your five-gallon can?—A. Yes, sir.

Q. With what?—A. With a measure he had in his store.

Q. Now, describe the measure he had, that he undertook to measure your five-gallon can with?—A. The measure he had was dented.

Q. Dented in what way?—A. It was dented under the lip of the can, and the lip itself was dented.

Q. What effect, if any, would that have upon the size or capacity of Driscoll's gallon can?—A. It would have a tendency to decrease its capacity.

Q. So that it would not hold a full gallon?—A. No, sir.

Q. Now, what was the result of Driscoll's measurement of your five-gallon cans, conducted in that way?—A. According to his
8030 one-gallon can, our five-gallon cans seal too much.

Q. How much too much?—A. Possibly a half or, at the outside, a whole teacupful on five gallons.

Q. Did you thereafter actually measure Driscoll's gallon can?—A. Yes, sir.

Q. Who was with you, if anyone, when you did that?—A. Mr. Charles Talbot.

Q. Who was Mr. Talbot?—A. He was sealer of weights and measures in Pittsfield at that time.

Q. The official sealer?—A. Yes, sir.

Q. And what did you find with respect to the capacity of Driscoll's gallon measure that he had used in measuring your five-gallon can?—A. We found that his one-gallon can would not hold what the Government one-gallon can held.

Q. What the Government's one-gallon can held?—A. Yes, sir. Mr. Talbot, as I understand it, was furnished with a can by the Government to test other people's cans with.

Mr. MORRISON. Does this witness know anything about that?

Mr. ROSENTHAL. Oh, yes; he is right in the business.

Mr. MORRISON. He says he "understands."

Q. Talbot, the official sealer of weights and measures, had an official one-gallon can?—A. Yes, sir.

Q. That he took with him when you and he went to Driscoll's store the next day?—A. Yes, sir.

Q. And, comparing that official one-gallon can, the capacity of that official one-gallon can, with the capacity of the one-gallon
8031 can that Driscoll had used the day before in measuring your five-gallon can, you and he found that Driscoll's one-gallon can was short to the extent of about a cupful?—A. No, sir.

Q. Was short how much?—A. I don't know how much.

Q. Was short so that on the five gallons it would make about a cupful?—A. Yes, sir.

(A recess was here taken until 2 o'clock, at which time the direct examination was resumed.)

Q. Have you here the five-gallon cans which you used in measuring Driscoll's oil?—A. Yes, sir.

Q. Will you produce them, please?—A. Yes, sir [producing two cans].

Q. Are those the two cans that are now in front of you that you used in making the Driscoll measurements?—A. Yes, sir.

Mr. ROSENTHAL. I offer them in evidence, and ask that they be marked "Defendants' Exhibits 83 and 84," respectively.

(The cans were so marked.)

Mr. MORRISON. They are objected to as incompetent, immaterial, and because they have not been properly identified.

Q. Now, where have those two cans been since they were used by you in the Driscoll measurements?—A. Up to what time?

Q. Up to the time that they came on here to New York.—A. They have been at the Pittsfield station.

Q. Are they marked in any way so as to enable you to identify them as the same cans?—A. Yes, sir.

Q. How?—A. There is a sealer marked on them, and there is a mark which has been on that can ever since I have had it, of
8032 the State sealer of Providence, Rhode Island.

Q. And is there anything peculiar about the shape of the handles?—A. Yes, sir.

Q. What?—A. Instead of being round handles, as the modern cans are, they are square.

Q. Well, they are, and you so swear, the two cans that you used in making the Driscoll measurements?—A. Yes, sir.

Q. Now, I observe a certain seal upon those two cans. What are those seals?—A. They are the seals of the State sealer of weights and measures of Pittsfield.

Q. When were they put on there?—A. They were put on in February, 1908.

Q. What is his name?—A. Anson Griffin.

Q. Do you know a man by the name of Kelly?—A. Yes, sir.

Q. James H. Kelly?—A. Yes, sir.

Q. Where does he live and where is he in business?—A. Pittsfield.

Q. What is his business?—A. Grocer.

Q. Have you ever sold him any oil?—A. Yes, sir.

Q. Do you sell him oil now?—A. Yes, sir.

Q. When did you sell him oil?—A. Prior to the Hisgen Brothers coming into Pittsfield.

Q. When was that?—A. They came there in 1906, I think. We sold him all his oil previous to that time.

Q. Do you remember when Hisgen Brothers took him away from the Standard as a customer?—A. Yes, sir.

Q. Did you at that time, or about that time, or any time
8033 thereafter, offer Mr. Kelly a certain amount of oil free or any oil free if he would leave Hisgens and come back and trade with the Standard?—A. No, sir.

Q. Or did you ever authorize anyone else to make any such offer?—A. No, sir.

Q. Or did you ever offer him any oil free without any condition whatever attached to it?—A. No, sir.

Q. That did not take place, or anything of that kind?—A. No, sir.

Q. Who besides yourself at that time represented the Standard at Pittsfield in so far as any business relations with Mr. Kelly are concerned?—A. Mr. George Tuthill, of Springfield.

Q. Mr. George Tuthill, at Springfield?—A. Yes, sir.

Q. He was your superior officer?—A. Yes, sir.

Q. He did not sell Kelly any oil, did he?—A. No, sir.

Q. Or give him any?—A. No, sir.

Mr. MORRISON. I suppose he knows that of his own knowledge.

Cross-examination by Mr. MORRISON:

Q. How long have you been in the employ of the Standard Oil Company?—A. Nine years.

Q. At Pittsfield all the time?—A. Yes, sir.

Q. When you first went into their employ what did you do?—A. I had charge of the Pittsfield station and drove a tank wagon in connection with that work.

Q. Was anybody else over you at Pittsfield?—A. Yes, sir.
8034 Q. Who?—A. Mr. George Tuthill, of Springfield.

Q. Did he live at Pittsfield, too?—A. No, sir.

Q. Where did he live?—A. Springfield.

Q. How far is that from Pittsfield?—A. About fifty-one miles.

Q. So that he was not there very often, was he?—A. Why, I was sure to see Mr. Tuthill once a month, anyway.

Q. Once a month?—A. Yes, sir.

Q. Did he come over to your place or did you go over where he was?—A. Mr. Tuthill came to my place.

Q. He came around about once a month and checked you up, I suppose?—A. No, sir.

Q. What did he come there for?—A. Why, nothing special.

Q. Well, he must have had some business there with you, hadn't he?—A. I understood it was part of Mr. Tuthill's duty to look around the stations and see that they were kept up in proper shape.

Q. Whenever you had any trouble over there, lost any customers, he looked after that, didn't he?—A. Yes, sir.

Q. He came over to right the thing up?—A. Yes, sir.

Q. He came over there, did he not, when he learned that the Hisgens had sold some oil to Driscoll?—A. Yes, sir.

Q. He came there for the purpose of investigating that matter, didn't he?—A. I think so.

Q. Did you send him word, or how did he happen to come over there?—A. I think I told Mr. Tuthill.

Q. You told him?—A. Yes.

Q. Did you tell him after he got there, or did you send him
8035 word?—A. I wrote him.

Q. You wrote him a letter?—A. Yes, sir.

Q. When was that? What year and month, as nearly as you can tell?—A. I don't know.

Q. What year was it in?—A. I should think in 1900.

Q. 1900?—A. Yes, sir.

Q. What is your age, Mr. Akin?—A. Thirty-five.

Q. In the letter that you wrote him did you mention the fact that the Hisgens had sold anybody else?—A. I don't know.

Q. Had they, as a matter of fact, taken any of your other customers away from you?—A. Yes, sir.

Q. They had at the very time that they took Driscoll?—A. Yes, sir.

Q. Was that about the time that the Hisgens first commenced to do business in Pittsfield?—A. I think it was.

Q. That was when they started in?—A. I think so, with their barrel goods.

Q. What were you selling oil for in Pittsfield at that time?—A. I don't know.

Q. Didn't you ever know?—A. Yes; I know the present prices.

Q. No; but didn't you know what it was selling for at that time?—A. No, sir; I can't recall what it was selling for.

Q. You mean you don't remember now?—A. I don't remember.

Q. You don't remember whether it was 7, 8, 9, 10, 11, or 12 cents?—A. No, sir; I couldn't tell you.

Q. Haven't any idea?—A. No, sir.

8036 Q. Did you keep any books or records to show what it was selling for?—A. Yes, sir.

Q. Where are they?—A. They are in Pittsfield.

Q. You made reports of your sales, didn't you, and the prices you were getting?—A. Yes, sir.

Q. To whom?—A. To the Standard Oil Company of New York, Providence, Rhode Island.

Q. Did you make any report to Mr. Tuthill?—A. Make a daily report to Mr. Tuthill.

Q. You make a report of what oil is sold by your competitor?—A. No, sir.

Q. Don't say anything about that?—A. No, sir.

Q. Never mention it at all to him when you find that the competitor has made a sale?—A. Why, yes; we did when they were selling barrel goods in there.

Q. Every time there was a sale made to any of your customers you reported it, didn't you?—A. Yes, sir.

Q. So that Mr. Tuthill knew day by day just what you were doing and what your competitors were doing, didn't he?—A. He couldn't tell exactly what our competitors were doing.

Q. Well, didn't you report it as accurately as you could?—A. Yes, sir.

Q. You were able to find out, weren't you, if any sales were made?—A. Yes, sir.

Q. You were keeping pretty sharp watch of it, weren't you?—A. Yes, sir.

Q. How did you know that the Hisgens had shipped barrels of oil in there to Driscoll?—A. I saw them carrying it from the 8037 freight house to his store.

Q. Then did you make any inquiry of Driscoll about it? Didn't you immediately go to Driscoll?—A. No, sir.

Q. But you did report it to Tuthill?—A. Yes, sir.

Q. And how long before Tuthill got over there?—A. I don't know.

Q. Did he get over there that day?—A. No, sir.

Q. The next day?—A. I don't know.

Q. He came very soon, didn't he?—A. It was probably a few days.

Q. And you took some cans, then, and went right down there, did you?—A. No, sir. The first sale that the Hisgen Brothers made to Mr. Driscoll was when he was in business on North street in 1900.

Q. Did you measure the oil?—A. No, sir; not at that time.

Q. Well, what did Tuthill come over there to do about it and what did you do when he got over there?—A. He came over there to see if we couldn't get Mr. Driscoll's trade back.

Q. Did you succeed?—A. No, sir.

Q. Didn't get it back?—A. Not at that time.

Q. How long did the Hisgens have him at that time?—A. I don't know.

Q. When was it that the can was measured, what year?—A. Which can?

Q. Well, the only cans that were measured.—A. These cans here?

Q. No; the Driscoll can.—A. The Driscoll can was measured
8038 in 1902, I think.

Q. 1902?—A. Yes, sir.

Q. Now, how long after the first sale of oil to Driscoll by Hisgens was it before you went over there and measured the oil?—A. It was two years.

Q. And during that two years had you sold Driscoll any oil?—A. Yes, sir.

Q. You had been selling, and the Hisgens also?—A. Yes, sir.

Q. Both of you were selling to him?—A. Yes, sir.

Q. Which were selling the more, you or Hisgens?—A. Why, I think it was about an equal thing.

Q. You were selling or delivering from a tank wagon, weren't you?—A. Yes, sir.

Q. The Hisgens were shipping it in there in barrels?—A. Yes, sir.

Q. You were both then working to get their trade?—A. Yes, sir.

Q. And it was about an even break with you?—A. I should say so. We may have sold them a little more oil than the Hisgen Brothers did.

Q. Now, you finally went over there, three of you able-bodied men, to measure the oil, didn't you?—A. Yes, sir.

Q. And you took your own cans along?—A. Yes, sir.

Q. Did you measure the barrels which contained the oil or gauge them so as to see how much they would hold?—A. No, sir.

Q. Didn't do that?—A. We measured the contents of the barrels.

8039 Q. There is a way of ascertaining what a barrel will hold, isn't there?—A. I suppose so. I don't know.

Q. Didn't you ever measure barrels or gauge them to ascertain what the capacity was?—A. No, sir.

Q. Never did that?—A. No, sir.

Q. You took two cans over there, did you, to measure that oil?—A. Yes, sir.

Q. Had Driscoll asked you to come over there and measure his oil?—A. Yes, sir.

Q. You went over there and asked the privilege, didn't you?—A. No, sir. I telephoned Mr. Driscoll and asked him if he would care to have his barrels of oil measured.

Q. What did you want to measure them for?—A. I wanted to demonstrate to Mr. Driscoll that it was to his advantage to buy tank-wagon oil.

Q. Your idea was to get Mr. Driscoll away from the Hisgens, wasn't it?—A. Why, I wanted his trade, certainly.

Q. Yes, and to get his trade.—A. Yes.

Q. So that you proposed that you would go over there and measure Hisgen's oil?—A. Yes, sir.

Q. You didn't notify the Hisgens, did you, to be present at that measurement and see whether you made a fair measurement or not?—A. No, sir.

Q. But you did get Mr. Tuthill down there, didn't you?—A. Yes, sir.

Q. For that purpose?—A. I thought it was my duty to notify Mr. Tuthill that I was going to do such a thing.

8040 Q. Was it necessary to have Mr. Tuthill there to help you measure?—A. I felt more easy of mind to have Mr. Tuthill with me.

Q. Yes; you wanted somebody else?—A. Yes, sir.

Q. Did you need Mr. Launt also to make the measurement?—A. Yes, sir.

Q. What did you need him for?—A. I wanted him to pump the oil.

Q. You wanted him to do the pumping?—A. Yes, sir.

Q. Do you mean pump it out of the barrels?—A. Yes, sir.

Q. Well, you three gentlemen got over there and Mr. Driscoll was perfectly willing that you should make the measurement, was he?—A. Yes, sir.

Q. How long before you went over there was it that you telephoned him that you wanted to come and measure the oil?—A. How long before I went did I telephone?

Q. Yes.—A. I am under the impression that I telephoned him the same as this morning and went over to-morrow morning. Still I am not sure. It was a very short time.

Q. Well, you and Mr. Tuthill did the measuring, didn't you?—A. Yes, sir. Mr. Tuthill and Mr. Driscoll tallied the oil, Launt pumped it, and I dumped it into Mr. Driscoll's tank.

Q. And for the time being you satisfied Mr. Driscoll, didn't you, that your measurement was correct?—A. Not entirely.

Q. Wasn't he entirely satisfied with it?—A. No, sir.

Q. He made some protest right then and there, didn't he?—A. Yes, sir.

8041 Q. That it wasn't right?—A. Yes, sir.

Q. But you insisted that it was?—A. Yes, sir.

Q. All three of you, I suppose?—A. Yes, sir.

Q. How much short was each barrel?—A. I don't know.

Q. About how much?—A. I don't want to say. I don't know. I can't remember.

Q. Was it five gallons?—A. No, sir; it wasn't as large an amount as that.

Q. Well, are you sure about that?—A. Yes, sir.

Q. If you don't know the amount, how can you be sure about that?—A. I know it was not as large an amount as that, but I don't know the exact amount. It wasn't five gallons on the barrel.

Q. Was it four?—A. I think it was somewhere in the neighborhood of three.

Q. In the neighborhood of three gallons to the barrel?—A. They didn't all run short the same amount.

Q. They varied somewhat?—A. Yes, sir.

Q. You don't know how long the oil had been standing in the barrels?—A. No, sir.

Q. Does oil always measure exactly alike? That is to say, if the weather is hot, does the oil expand so that it will measure more than it will in cold weather?—A. I think it does.

Q. And there is such a thing as evaporation, is there not, of oil in barrels?—A. It is very slight.

Q. Well, you have handled and bought barreled oil?—A. Yes, sir.

Q. To any great extent?—A. Considerable.

8042 Q. I thought you delivered yours entirely in tank wagons.—A. Not entirely.

Q. You deliver some in barrels, do you, around Pittsfield?—A. No, sir. We handle the barrels for the back-country trade that we can't reach with the tank wagon.

Q. Barrels leak, and you lose oil in that way, I suppose?—A. Yes, sir.

Q. So that it is seldom, after oil has been in barrels some length of time, is it not, that some of it doesn't evaporate or run out or disappear?—A. Well, I have held barrels there at Pittsfield for three or four weeks and found them perfectly good when I took them out.

Q. Well, I know, but answer my question.—A. Will you state the question again, please?

Q. It is not unusual, is it, in barreled oil that there is a shrinkage if it stands for some time?—A. No; it is not unusual.

Q. Did you explain that to Mr. Driscoll?—A. No; I didn't.

Q. You didn't say a word to him about it?—A. No, sir.

Q. Did he say anything to you about that?—A. No, sir.

Q. That subject was not brought up, then, during that interview at all?—A. No, sir.

Q. Now, as I understand you, these are the identical cans that you had there that day?—A. Yes, sir.

Q. How long had you had those cans before that?—A. Those cans have been at the Pittsfield station ever since I have been there, and how long before that I don't know.

8043 Q. Did you at any time before that have them sealed?—A. Yes, sir; I have the cans sealed every year.

Q. By whom did you have them sealed before you made the measurement?—A. They were sealed by Mr. Talbot, I think.

Q. Have you got any certificate or anything to show?—A. They never give us a certificate.

Q. Don't they put a certificate on the can?—A. They use a die to stamp them with.

Q. Do they stamp on the can what they hold?—A. No, sir.

Q. What do they stamp on them?—A. They simply use a stamp that reads similar to this lead seal.

Q. What does that read?—A. "08"—that means 1908—on that side and "P D" on the other side.

Q. Do I understand you that you yourself had Mr. Talbot seal those cans?—A. Yes, sir.

Q. And when was that, with reference to the time that you made the measurement?—A. They had been sealed before and after the measurement.

Q. Now, how many cans did you have in use at the time you made this measurement?—A. Six.

Q. Six cans in all?—A. Yes, sir.

Q. How do you know that these are the two out of the six that you had?—A. Those are the cans that I used myself every day on the tank wagon, and there were no other two cans at the Pittsfield station like them.

Q. And you took those two particular cans?—A. Took the cans that I had been using myself to deliver oil to Mr. Driscoll with every week.

8044 Q. Where is this man Talbot?—A. He is here in the room.

Q. Was he sealer of weights and measures at the time that the measurement was made?—A. Yes, sir.

Q. Hadn't his term of office expired some time before that?—A. I don't believe so; at least the records of the city hall of Pittsfield do not show it.

Q. Was his brother ever sealer of weights and measures there?—A. Yes, sir.

Q. Was that before or afterwards?—A. That was prior to my coming to Pittsfield.

Q. Do you know whether he ever sealed these cans?—A. No, sir.

Q. Don't know anything about that?—A. No, sir.

Q. When did Mr. Talbot cease to be the sealer of weights and measures at Pittsfield?—A. I think some time during the latter part of 1902 or the early part of 1903.

Q. What other business was he doing at that time?—A. He was in the stationery business.

Q. And what business is he engaged in now?—A. He is storekeeper for the Pittsfield Electric Company at Pittsfield.

Q. And has been there ever since, has he?—A. I think so; yes, sir.

Q. How long after you made the measurement of those cans was it before you first sold Driscoll any oil?—A. That I don't know.

Q. You sold him some immediately after you made that measurement, didn't you?—A. Not right away; no, sir.

Q. Well, how long was it before you sold him again?—A. I
8045 can't tell you, for I don't know.

Q. Was it a year or two years?—A. Oh, no; it wasn't as long as that. Maybe a matter of a couple of weeks, but just how long I don't know.

Q. You sold to him as soon as he used up what he had on hand?—A. I take it for granted we did.

Q. You got the very next order?—A. I couldn't say. Yes; we did get the next order.

Q. You got it on the strength of that measurement, didn't you?—A. I suppose so.

Q. Who got the next order?—A. I don't know.

Q. Well, you didn't get it, did you?—A. I don't know.

Q. You lost his trade right after that, didn't you?—A. Not right away.

Q. How long was it before you again lost his trade?—A. I don't know. It wasn't a great while. Mr. Hisgen sold him some of their oil after that and we sold him some.

Q. No; but you made the one sale, did you not, the first sale, after you measured the oil?—A. Yes.

Q. The next time he bought he bought of the Hisgens, didn't he?—A. He may have; I don't know.

Q. He didn't buy of you for two months after that, did he?—A. I don't know.

Q. Haven't you any recollection at all about it?—A. No, sir; I haven't the slightest.

Q. Well, you remember this, now, don't you, that you lost him for a time after you made that first sale, entirely, and he
8046 was dealing with the Hisgens?—A. I know that Mr. Driscoll bought oil of the Hisgens, but how much I don't know, or how often I don't know.

Q. Well, you didn't sell him any for two or three months after that, did you?—A. We may not have. I couldn't say positively.

Q. You mean you don't remember that you did?—A. No; I don't I don't remember we did or didn't.

Q. You knew, didn't you, that Mr. Driscoll had his own cans sealed after that, and that he claimed that it was correct?—A. After he measured our cans?

Q. Yes.—A. I don't know that Mr. Driscoll had it sealed.

Q. You knew he turned it over to somebody to have it sealed?—A. I knew he turned it over to Hisgen Brothers.

Q. He told you that, didn't he?—A. I don't know as Mr. Hisgen told me that. I think I read it in the paper.

Q. Now, just think back. Didn't you have a conversation with Driscoll and didn't Driscoll tell you that he had sent these cans away and that you were wrong about it, and that the Hisgen's oil was not short, as you claimed it was?—A. No, sir; I don't ever recollect of Mr. Driscoll's telling me anything of the sort.

Q. Do you remember of talking with Mr. Driscoll at all about it afterwards?—A. No; I don't.

Q. You won't say that you didn't?—A. Yes; I will.

Q. You are sure you didn't talk with him?—A. I am very positive I didn't.

8047 Q. And that all you knew about it was what you saw in the newspapers?—A. Yes, sir.

Q. That is all?—A. That is all.

Q. You were calling on Driscoll, trying to sell him oil, weren't you?—A. It was part of my work to call on him once a week.

Q. Well, you did call on him, didn't you?—A. Yes, sir.

Q. Notwithstanding the fact you had read this in the newspapers you never said a word to him about it?—A. I don't recollect ever saying a word to him about it.

Q. And, notwithstanding the fact that he quit buying of you, you didn't further discuss the question as to the correctness of the measurements made of that oil?—A. No, sir; I did not.

Q. The subject never came up after that between you and him?—A. No, sir.

Q. You were on fairly good terms with Driscoll, weren't you?—A. Yes. I didn't entertain any feeling of malice against him because he bought of a competitor. He had a right to buy wherever he wanted to.

Q. You were rather glad that he had, were you?—A. No, sir; I wasn't.

Q. Well, did he have any feeling toward you or express any?—A. Not that I know of.

Q. Didn't he tell you what he thought about your measuring that can and that you had cheated in your measurement?—A. No, sir.

Q. Didn't tell you that?—A. No, sir.

8048 Q. Didn't he tell you that on the very day that you made the measurement?—A. He told us that our cans held more than five gallons according to his cans.

Q. Didn't he tell you that you hadn't measured it correctly?—A. He may have said that.

Q. And didn't he afterward?—A. Not afterward, that I know of.

Q. At subsequent visits?—A. No, sir, not that I know of.

Q. Now, these cans that are offered in evidence here seem to be built with a sort of a flaring lip or collar. What is the purpose of that on a can?—A. To keep the oil from slopping on the storekeeper's floor.

Q. How full do you have to fill that kind of a can, or up to what point, in order to have it contain five gallons?—A. Up to there [indicating].

Q. Please put it in language so that the reporter can get it into the record.—A. About to the top of the collar.

Q. What do you mean by the collar?—A. This part here.

Q. You mean the straight part, up and down, not the flaring part?—A. No, sir.

Q. What you mean is, you fill it up to the point where the collar commences to flare; is that it?—A. Right around in there; not quite to the top of that collar.

Q. Not quite to the top of that collar?—A. Not quite to the top of that collar.

8049 Q. The collar is apparently soldered on there and the line between the collar and the rest of the can is quite apparent, isn't it?—A. What line do you mean?

Q. The line that is made by the soldering of the collar, as I call it, on to the rest of the can.—A. You mean this around here [indicating]?

Q. No, I mean the flaring part.—A. This here?

Q. Yes.—A. That is not the collar. That is what they call the lip.

Q. You call the collar the straight part?—A. Yes, sir.

Q. That raises up?—A. Yes, sir.

Q. And what do you call this that is soldered on just above that?—A. The lip.

Q. The lip? I call it collar. We will call it lip, then. Then, you will fill it up pretty nearly to the line between the collar and the lip?—A. Yes, sir.

Q. And then you would have five gallons?—A. Yes, sir.

Q. Suppose you filled in there all that the can would hold without slopping over, if it were sitting still, how much would you have?—A. You would have more than five gallons.

Q. About how much more?—A. Why, I don't know.

Q. Well, you ought to be able to make something of an estimate.—A. You mean how much over five gallons?

Q. Yes.—A. I should say about a cup full.

Q. There would be more than a pint, wouldn't there, in either one of those cans?—A. No, I don't believe there would be more than a pint.

Q. Now, you pumped this oil out of the barrel, did you?—
8050 A. Yes, sir.

Q. What sort of a pump did you have?—A. What is termed a rotary pump.

Q. And does that have a nozzle on, a spout, that runs into the can?—A. No, sir; there is a hose attached to the pump that the oil goes through.

Q. Carries it to the can?—A. Yes, sir.

Q. Then you fill the can by means of that pump and hose?—A. Yes, sir.

Q. How frequently in your business there at Pittsfield have you measured the oil of your competitors; any of them?—A. I think that was the only time we did it.

Q. That was the only time?—A. Yes, sir.

Q. Did you measure anybody else's oil at that time?—A. Yes, sir.

Q. Whose?—A. Measured some oil at Mr. James Egan's.

Q. Was that sold by the Hisgens?—A. Yes, sir.

Q. Anybody else's there?—A. You mean besides myself?

Q. Besides Egan and Driscoll.—A. Driscoll wasn't there.

Q. Any other dealers?—A. No, sir.

Q. I am not asking you whether Driscoll was present. You measured Driscoll's oil?—A. Yes, sir.

Q. And you measured Egan's oil?—A. Yes, sir.

Q. And did you measure anybody else's?—A. Yes, sir.

Q. Whose?—A. McMahon Brothers.

Q. The Hisgens had sold to them?—A. Yes, sir.

Q. Did you measure anybody else's oil?—A. Yes, sir.
8051 Q. Whose?—A. A man by the name of Pat Keegan.
Q. They had sold to Keegan, had they?—A. No, sir.
Q. That is all the sales they had made in the town?—A. No, sir; they made other sales.
Q. Had they made other sales before that?—A. Yes, sir.
Q. To whom else had they sold?—A. I don't know. At different times they sold a great many merchants there in Pittsfield.
Q. Did you measure all of the oil of these persons which you say you did measure at the same time, the same day?—A. No, sir.
Q. Or was it about the same time?—A. Why, yes, it was along about the same time.
Q. All within a week?—A. A week or ten days.
Q. Did you make application to anybody to measure the oil and were you refused?—A. Not that I remember of.
Q. Everybody permitted you that you asked?—A. Yes, sir.
Q. Was Mr. Tuthill with you at each time?—A. No, sir.
Q. At what place was Tuthill present?—A. He was present at Driscoll's and Keegan's.
Q. Was anybody else with you at the other places?—A. Yes.
Q. Who?—A. Some of my own men.
Q. Launt?—A. I don't remember which of the men it was. One of my own men, that is all I can recall of it.
Q. Did anybody ever measure your oil that you know of where you had sold it?—A. In barrels?
Q. Yes.—A. I don't know.
Q. Or in tanks?—A. We have had our cans measured a good
8052 many times.
Q. By whom?—A. Different storekeepers. We have tried it with a self-measuring pump.
Q. No; I mean did any competitor ever go in and ask to measure your oil?—A. Not that I ever heard of.
Q. You think that is a legitimate method of competition, do you?—A. According to my point of view it was.
Q. Did you really want to do that, or were you coerced to do it?—A. I did it of my own free will.
Q. Of your own free will?—A. Yes, sir.
Q. Didn't Tuthill tell you to do it?—A. No, sir.
Q. Wasn't there a time when you wanted to leave the Standard on account of their methods of competition?—A. I thought of leaving them once.
Q. And that was because you didn't like their methods, wasn't it?—A. There were some things I didn't like.
Q. This was one of the very things, wasn't it?—A. No, sir.
Q. What was it?—A. I didn't like more than one price.
Q. Didn't like to have more than one price?—A. No, sir.
Q. The Standard didn't have more than one price, did they?—A. There were some places where they sold oil in given quantities at a less price; yes.

Q. You didn't like that?—A. I didn't like that; no.

Q. You didn't think that was square?—A. I didn't like it.

Q. Did you tell them you didn't like it, and compel them to change that?—A. I told Mr. Tuthill I didn't like it; yes, sir.

Q. Did he agree, if you would stay, that he would change
8053 it?—A. No, sir.

Q. When was it that you were thinking of leaving the Standard because you didn't like their methods?—A. It was about the time that Hisgen Brothers come into Pittsfield.

Q. You wanted to go with the Hisgens, didn't you?—A. I thought some of going with them; yes, sir.

Q. You tried to help them get started there?—A. I don't know as I tried particularly to help them.

Q. You helped them to get up their stationery, didn't you?—A. No, sir.

Q. You furnished them forms, didn't you?—A. I showed them some of the Standard blank forms; yes.

Q. You were giving them information about when their tanks would arrive there, weren't you?—A. Giving whom?

Q. The Hisgens.—A. Giving them information when their tanks——

Q. Yes; when their tanks arrived.—A. I think I did notify them of one tank coming in there.

Q. Now, then, you told the Hisgens, didn't you, just exactly why you didn't want to work any longer for the Standard?—A. I think I did.

Q. What change came over you that induced you to remain with the Standard, whose methods you didn't like?—A. Things were changed round so that there was one price throughout the territory, that suited me perfectly.

8054 Q. Now, was that change made before you changed your mind and concluded to stay with them?—A. Yes, sir.

Q. Now, this was in 1902, wasn't it?—A. No, sir.

Q. When was it?—A. I think it was in 1906.

Q. 1906?—A. Yes, sir.

Q. That you were talking of quitting?—A. I think so.

Q. Now, this was about the time that the Hisgens opened up their station there at Pittsfield, wasn't it?—A. Yes, sir.

Q. Did they immediately change after you complained to Tuthill?—A. Not immediately; no, sir.

Q. They did it for a year, did they?—A. I don't know how long it was.

Q. Give us your best judgment?—A. Can I have that question repeated to me?

The question was read.

A. You mean that the special prices were cut out?

Q. Yes.—A. I don't believe it was quite a year.

Q. It wasn't quite a year?—A. No, sir.

Q. It was only a very few weeks, was it, before you made up your mind not to go with the Hisgens?—A. A very few weeks?

Q. After you complained to Mr. Tuthill about their methods.—A. I don't recollect how long it was.

Q. You made up your mind not to go with the Hisgens, did you not, before this change was made in the methods of the Standard Oil Company in doing its business?—A. I don't remember whether I did or not.

Q. You don't remember?—A. No, sir.

8055 Q. Then, you are not able to state what the reason was that caused you to reconsider and remain with the Standard?—A. No; I am not.

Q. Now, was that the only trouble that you complained of; that is, that they had different prices to different customers?—A. Yes, sir; that was the only thing I didn't like about it, and never liked about it.

Q. Did you like the idea of going over to the depot and checking off the number of barrels and the name of the consignee, and so on, that were shipped in to Pittsfield by your competitors?

Mr. ROSENTHAL. I object to that. The witness has not testified he ever did anything of the kind. The question assumes that he did, and you [the witness] are under no obligation to answer.

(The question was read.)

Mr. ROSENTHAL. That question, Mr. Witness, assumes that you did something that you haven't testified in this case that you did.

Mr. MORRISON. Now, you are saying that purely to instruct the witness.

Mr. ROSENTHAL. Indeed I am, because it is a catch question which you know you haven't any right to ask.

Mr. MORRISON. I have a perfect right to ask that question on cross-examination.

Mr. ROSENTHAL. I am doing it simply and solely for the purpose of instructing the witness that it is a catch question.

8056 Mr. MORRISON. Yes, and as to how you would like to have him answer.

Mr. ROSENTHAL. Not at all. The witness has already demonstrated that he can take care of himself and that he is a truthful witness.

Mr. MORRISON. I am glad that you will admit that much.

(The question was again read.)

A. No, I didn't like to do it.

Q. You did do it, didn't you?—A. I have seen their barrels in the freight house; yes, sir.

Q. Well, you made it a business to go there and see them, didn't you?—A. No, sir, I did not.

Q. Oh, you didn't?—A. No, sir.

Q. You just took them off when you happened to see them there?—A. Yes, sir.

Q. What did you get that information for?—A. What did I get it for?

Q. Yes.—A. I always reported what competitive oil came into the station.

Q. You did report what came into the station?—A. Yes, sir.

Q. Did you report what went out of that station?—A. Out of what station?

Q. Pittsfield. A. There was nothing to report going out.

Q. Nothing went out?—A. No, sir.

Q. You were quite strenuous in your efforts to get a position
8057 with the Hisgen Brothers, weren't you?—A. I don't know as I was very strenuous.

Q. You got other people to write letters for you, didn't you?—A. No, sir, I never asked a soul to write a letter for me.

Q. Didn't you talk to Mr. Smith about it?—A. Yes, sir.

Q. You knew he did write a letter for you, didn't you?—A. Yes, sir.

Q. Didn't you ask him to?—A. No, sir, he voluntarily wrote Mr. Hisgen for me.

Q. You told him that you didn't want to work for the Standard any longer, didn't you.—A. Told Mr. Smith that?

Q. Yes.—A. Not that I know of.

Q. What did you say to him that induced him to write a letter?—A. I don't remember what I said to Mr. Smith. I talked over a great many things with Mr. Smith.

Q. The result of it was you know that he wrote a letter?—A. Yes, sir.

Q. Did he give that letter to you or did he mail it to the Hisgens?—A. He mailed it to the Hisgens, I believe.

Q. You have seen it, haven't you?—A. No, sir, I never saw it, never saw a copy of it.

Q. Did you have an accurate list or accurate information of the shipments of independent oil into Pittsfield?—A. Did I have an accurate list?

Q. Yes.—A. No, sir.

Q. Didn't your men go there and take the number or take the information off of the barrels when you didn't do it yourself?—A. No, sir.

8058 Q. Did Mr. Launt do that?—A. No, sir.

Q. Did you get any information from any other source than what you saw on the barrels?—A. No, sir.

Q. Are you acquainted with the station agent there?—A. No, sir. never have been.

Q. How many railroads are there there in Pittsfield?—A. Two.

Q. Did you have a conversation with James H. Kelly at any time about putting in oil for him?—A. No, sir.

Q. Never talked with him in your life about it?—A. No, sir.

Q. He was a dealer there, wasn't he, in Pittsfield?—A. Yes, sir.

Q. Selling oil?—A. Yes, sir.

Q. Of whom did he buy his oil?—A. He bought of us up to the time that the Hisgens came in, and then he dropped us entirely.

Q. And you never went to see him as to why he dropped you?—A. No, sir.

Q. Did you send anybody?—A. No, sir.

Q. Did you know why?—A. Why what?

Q. Why he dropped you and bought of the Hisgens?—A. Yes, sir.

Q. What was the reason?—A. He told my driver, Cowlin, when he was going down Linden street toward the store one day, that he didn't want them to stop there any more; that he didn't want any more of their damned old oil.

Q. And you let the matter drop at that without going to see
8059 him to ascertain whether you could fix it up with him?—A. Yes, sir, I did let it drop.

Q. You didn't want to sell him oil then, did you?—A. Why, I would like to sell Mr. Kelly oil to-day.

Q. But he would have to come to you; you wouldn't go to him?—A. I wouldn't go to him; no, sir.

Q. Did you know that Kelly went up before an officer and made an affidavit to a conversation which he says he had with you?—A. No, sir.

Q. You never knew that he had done that?—A. I never knew it; no, sir.

Q. Did you see anything about it in the newspapers?—A. I saw that he had made an affidavit; yes sir. If I am not mistaken, no names appeared in the affidavit.

Q. Didn't you and Tuthill go there together and talk with him about that affidavit?—A. Yes, sir.

Q. Oh, you did go?—A. Yes, sir. Spoke to him about the affidavit; we didn't say anything to him about oil.

Q. Nothing about oil?—A. No, sir.

Q. You wanted him to retract that, didn't you?—A. No, sir; we didn't either of us ask him to.

Q. What did you want?—A. We wanted simply to find out if he had made such affidavit.

Q. He told you he had, didn't he?—A. Yes, sir.

Q. And didn't you tell him that you wanted him to retract it, that it wasn't true, or something of that kind?—A. No, sir.

Q. Well, was that the only purpose of your going to him,
8060 to find out why he made the affidavit?—A. That is the only purpose I know, to find out if he did make the affidavit.

Q. What did you want to use the information for?—A. I don't know.

Q. You don't know?—A. No. Simply went there with Mr. Tuthill.

Q. Mr. Tuthill engineered that expedition, did he?—A. Yes, sir.

Q. And you didn't know what you were going for?—A. Yes; Mr. Tuthill told me when he came into the office what we were going down there for.

Q. Yes. To find out whether he made that affidavit?—A. Yes, sir.

Q. Well, you didn't make any affidavit in reference to it, did you?—A. No, sir.

Q. Did Mr. Tuthill ask him to retract it, in your presence?—A. No, sir.

Q. Didn't say a word about that?—A. No, sir.

Q. Do you know, Mr. Akin, whether those cans are gauged to the bottom of the collar or to the top?—A. To the top.

Q. To the top?—A. Yes, sir.

Q. How do you know that?—A. Because I saw them tested with the sealer's can.

Q. That is, you saw the sealer gauge them in that way?—A. Yes, sir.

8061 Redirect examination by Mr. ROSENTHAL:

Q. To what point did you fill those cans when you were making the Driscoll measurement?—A. When I was making the Driscoll measurement?

Q. Up to what point did you fill the cans?—A. I filled them up below the collar here, and I was more than careful in doing it.

Q. Below the top of the collar?—A. A little below the top of the collar that I put the oil to.

Q. So you didn't get more than 5 gallons?—A. No, sir; I did not.

Q. You didn't cover any part of the lip?—A. No, sir. Our pump works both ways. You can either throw the oil out of the barrel, or you can take it back into it; and I was very careful in doing the work.

8062 L. J. DRAKE, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is your full name?—A. Lauren J. Drake.

Q. When were you the general sales agent for the Standard Oil Company of New York, in the State of New York?—A. In 1903 and 1904.

Q. And as such general sales agent during that time did you have charge of the Albany district?—A. Yes, sir.

Q. And of the various towns and points in and around Albany?—A. Yes, sir.

Q. Are you familiar with the prices that prevailed during that period of time?—A. I was at that time; I was familiar with the prices, yes, sir.

Paper marked Defendants' Exhibit 85.

Q. Where is Conklingville?—A. Conklingville is about 20 miles or 20¼ miles from Northville.

Q. While Mr. Hisgen was on the stand, in Albany, he testified he sent out about 150 letters to dealers in the towns named on Defendants' Exhibit 85, for the purpose of ascertaining the prices which the Standard Oil Company, in February, 1903, was receiving from those dealers in those towns at that time; and the Government,

in connection with his testimony, offered in evidence Pe-
8063 titioner's Exhibit 650, which purported to be an exhibit which was based upon his testimony, describing the results of the replies that he had received from those dealers. The first town referred to by him in that connection was the town of Conklingville. You say that is about 20½ miles from Northville?—A. Yes, sir.

Q. Now, what is the relation between Conklingville and Northville?—A. Northville is the original station or the station where the tanks which we ship from or draw from are located.

Q. And both Conklingville and Northville are shown upon Exhibit 85?—A. Yes, sir.

Q. Now, Northville is what you call your station-supply point?—A. Yes, sir.

Q. That is where you have the oil stored?—A. Yes, sir.

Q. And the oil is hauled by tank-wagon, then, from Northville to Conklingville?—A. Yes, sir.

Q. A distance of 20½ miles?—A. Yes, sir.

Q. Is that right?—A. Yes sir.

Q. And it is handled by your tank-wagon drivers on commission basis?—A. Yes, sir.

Q. So, on this exhibit where you have 20½ miles haul, that means the haul from Northville to Conklingville?—A. Yes, sir.

Q. And "commission point," which immediately follows, indicates that the tank-wagon driver is paid a commission instead of a salary?—A. Yes, sir.

Q. Then, that is followed by the statement "small gallon-
8064 age;" what does that mean?—A. That means it is a small town and that the gallonage is small at that point.

Q. And that is followed by the statement "extra freight." What does that mean?—A. That means extra charge for hauling it from the original station.

Q. An extra freight charge from where to where?—A. From Northville to Conklingville.

Q. Well, isn't it hauled by tank wagon from Northville to Conklingville?—A. Yes, sir.

Q. Where does the freight charge come in?—A. It is put in there as freight; it is really a commission.

Q. I see. That is, the tank-wagon haul is designated here as a freight haul?—A. Yes, sir.

Q. Now, at Northville, which was your supply-station point, in February, 1903, the price was what?—A. It was 11 cents.

Q. Following the "station price" you have there the "town price." What does that mean?—A. That is delivery at Conklingville.

Q. And that was 12 cents?—A. Yes, sir.

Q. So the difference in price between Northville and Conklingville in February, 1903, was 1 cent?—A. Yes, sir.

Q. And what do you say that difference was due to?—A. It was the hauling from one point to another.

Q. That is, it was due to the fact that there was a haul of 20½ miles——A. Yes, sir.

8065 Q. That Conklingville was a commission point, and the gallonage was small, and that there was that extra freight charge, as you call it?—A. Yes, sir.

Q. And the comments that you have made upon this exhibit after Ellenburg Center, which comes next, White Store, Shokan, are explained in the same way that you have explained the Conklingville-Northville statement?—A. Yes, sir.

Q. Is that right?—A. Yes, sir.

Q. Now, I take you down to Shokan. Mr. Hisgen testified, as shown by Petitioner's Exhibit 650, that in February, 1903, the Standard Oil price at Shokan was 10½ cents. Was that correct, or otherwise?—A. The price at that time was 11½ cents.

Q. Mr. Hisgen testified that the price at Milbrook at that time was 10 cents. As a matter of fact, what was the price?—A. At what point?

Q. Milbrook, under No. 7.—A. 11 cent was the price there.

Q. Your last column here, under the head "Exhibit 650, price," represents the prices which Mr. Hisgen testified prevailed. Is that right?—A. I beg your pardon, sir.

Q. That represents the price which Mr. Hisgen testified prevailed at that time, in 1903?—A. At Milbrook?

Q. Oh, no.

The question was read.

Q. Do you understand that, Mr. Drake, or don't you?—A. Why, he names a price of 10 cents. I claim that that price is wrong.

8066 Q. Yes; I understand. But the Hisgen prices, which he testified to, are shown in that last column under the head of "Exhibit 650 price."—A. Yes, sir. I understand.

Q. Now, under the head of "Town price," what do you show, generally speaking?—A. The town price is 11½ cents.

Q. No; you don't understand me. You have got a heading on that exhibit "Town price." What does that mean?—A. That means the point to which it is delivered from the original station.

Q. And you show the February, 1903, prices in those various towns under that heading, do you not?—A. Yes, sir.

Q. And under the heading of "Station price" you show what?—A. I show the price which is at the point where we start from, where we carry it in bulk.

Q. Now, wherever the town at which the oil is sold is far distant from the station at which the oil is stored, or any considerable distance from the station at which the oil is stored, the town price is very apt to differ from the station price, is it not?—A. Very often; yes, sir.

Q. Why?—A. Because there is the distance in the haul, hauling it from one station to the other.

Q. And that, therefore, will account for a difference in prices between towns that lie within six or eight or ten miles of each other?—A. Yes, sir.

Q. In a great many instances, would it not?—A. Yes, sir.

Q. Now, in addition to that distance, in addition to the mere element of distance between the station where the oil is
8067 put in the tank and from which tank it is obtained and hauled to the town where it is ultimately sold, in addition to that mere element of distance there are other physical conditions that must be considered, are there not?—A. Yes, sir.

Q. For example, what are they?—A. There are some parts of the country where that is delivered that are mountainous country.

Q. In this particular territory that Mr. Hisgen selected, that happens to be a mountainous territory?—A. Some of it; yes; rough roads.

Q. The roads are bad?—A. Yes, sir.

Q. And hilly, and the hauls are long. Isn't that so?—A. Yes, sir.

Q. And you show here point by point, taking up the various towns that Mr. Hisgen testified about, just what the physical condition of the haul in every instance is, do you not?—A. Yes, sir.

Q. And what the other physical conditions are?—A. Yes, sir.

Q. For instance, take No. 20, Rotterdam Junction, concerning which Mr. Hisgen testified. Your station price there is 10½ cents?—A. Yes, sir.

Q. That means that it is Schenectady oil sold at 10½ cents. Is that right?—A. Yes, sir.

Q. At Rotterdam Junction, which was 9 miles away, your oil sold for 11 cents?—A. Yes, sir.

8068 Q. But in order to get to Rotterdam Junction you had to haul the oil by tank wagon from Schenectady, 9 miles, over roads which at times were bad?—A. Yes, sir.

Q. And, then, at Rotterdam Junction you sold but a small amount of oil?—A. Yes, sir.

Q. That appears upon this exhibit, does it not?—A. Yes, sir.

Mr. ROSENTHAL. I offer defendants' Exhibit 85 in evidence.

Q. Mr. Drake, how does the cost of marketing in large towns compare with the cost of marketing in smaller towns?—A. It is usually smaller in the large towns where the gallonage is very large.

Q. Why is that?—A. They can deliver more oil. A great many of them go out with two tank wagon loads a day, whereas if it is a small town it would be only one.

Q. The more compact the territory the cheaper is the delivery?—A. Yes, sir.

Q. So that a small town contiguous to a large town might not get the same price?—A. Might not; no, sir.

Q. Is that not so?—A. Yes, sir.

Q. Do your tank wagons differ in size?—A. Yes, sir.

Q. Why is that?—A. Well, take the city towns where there is large delivery, they can handle larger wagons. Outside, where there

are heavy roads and long hauls, they have to run lighter or smaller wagons.

Q. Where you have small wagons and heavy roads and long
8069 hauls, it necessarily affects the price, does it not?—A. It generally does; yes, sir.

Q. And take it through those northern New York mountainous towns, how are the roads in the winter time?—A. Very bad; sometimes almost impassable.

Q. Does that have any effect upon price?—A. It very often does; yes, sir.

Q. Now, take it at your small points up there, are you sometimes, by reason of the condition of the roads, compelled to have more than two horses to a tank wagon?—A. Very often have four.

Q. Just why is that?—A. It is on account of the heavy roads and hauling long distances.

Q. So you have a man up there driving a small tank wagon over bad roads, with four horses, as compared with a man in the large city driving a larger tank wagon with but two horses and over good roads?—A. Yes, sir.

Q. And making quick deliveries, close to each other?—A. Yes, sir.

Q. And that of course has a relation to the price question?—A. Yes, sir.

Q. Are there some points, also, through that territory where you do not sell oil enough to warrant you in employing a tank-wagon man on a salary?—A. Yes; there are.

Q. What do you do under such circumstances?—A. They handle it on commission; pay him so much a gallon.

8070 Q. You pay him so much a gallon?—A. Yes, sir.

Q. And does that affect the price? Does that enter into the question of price?—A. It very often does; yes, sir.

Q. In what way, increases it?—A. Increases the price; yes, sir.

Q. Depending upon the amount of oil that a commission man may sell?—A. Yes, sir.

Q. And do those commissions differ at different points?—A. Yes, sir.

Q. That is, you pay at some places a higher commission than you do at other places?—A. Yes, sir.

Q. I suppose salaries differ at different points, too, do they not?—A. Yes; there are differences in salaries; yes, sir.

Q. Some points higher salaries are paid than at other points?—A. Yes; in large cities.

Q. And all of those elements enter into the question of price?—A. Yes, sir.

Q. In the early part of 1905 the Standard Oil Company lowered its price at Albany from 9 to 7 cents. Will you please explain the circumstances under which that reduction was made?—A. That was made on account of competition, a price made by competitors.

Q. What competitor was it?—A. The Tiona Oil Company.

Q. How did you ascertain that?—A. We ascertained that by the prices made by bills, tickets, that we got, where they sold the oil.

Q. Did any original contract come into your possession?—A. Yes, sir.

8071 Q. I show you defendants' Exhibit 86. Will you please state what that is?—A. That is a contract which was made with the dealers in Troy by the Tiona Oil Company.

Mr. MORRISON. Let me put in an objection there. I assume the contract speaks for itself; that this witness doesn't know any more than what he sees on the paper.

Q. That is a photograph of what you have designated the "contract," is it not?—A. Yes, sir.

Q. And from what was that photograph made?—A. That was made from the original contract.

Q. Where did you get the original?—A. The original I got from our man in charge of the business at Albany.

Q. When?—A. That was in 1905.

Q. At that time?—A. Yes, sir.

Q. And what did you then do? Have the original photographed?—A. Yes, sir.

Q. What did you do with the original?—A. The original was turned back to the party that——

Q. To the customer?—A. Yes, sir.

Q. Did you have any other information besides that?—A. Yes, sir; we had other information.

Q. Showing the cuts made by the Tiona?—A. Yes, sir.

Q. And from what sources did you acquire that other information?—A. By the prices which they made on their tickets where they delivered the oil.

Q. Your men in soliciting trade would ascertain that the
8072 Tiona had offered a cut price——A. They showed us the evidence.

Q. They showed you the evidence?—A. Yes, sir.

Q. Acting then upon the information which you received in that way from your men, and upon your inspection of this contract, of which defendants' Exhibit 86 is a photographic copy, you lowered the Standard price?—A. Yes, sir.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 86, for the purpose of showing that that was one of the reasons that induced Mr. Drake, as the general sales agent of the Standard Oil Company of New York, in the early part of the year 1905, to reduce the price of oil at Albany from 9 to 7 cents. It is not offered as evidence of the fact; it is offered simply for the purpose of showing why Mr. Drake reduced the price.

Mr. MORRISON. Now let me ask him some questions about it.

By Mr. MORRISON:

Q. Who made this photograph?—A. I don't know, sir.

Q. Who caused it to be made?—A. Our manager at Albany.

Q. How do you know?—A. I know because he told me so.

Q. He told you that he caused a photograph to be made of something that this represents?—A. Yes. I saw the contract, the original one.

Q. You didn't compare it with this, did you?—A. No, sir.

Q. This doesn't seem to be signed by anybody. There is nothing here to indicate whom that contract is made with, is there?—A. Aren't there any names on the bottom there?

Q. Well, look and see [handing defendants' Exhibit 86 to the
8073 witness].—A. It looks as though there were some names on there.

Q. Read it over and see if there are.—A. It shows the names of the stores where he is. These are the numbers of the stores and the places where he sold the oil.

Q. Yes; but who are the parties to that contract?—A. I don't know the names.

Q. There are no names there, are there?—A. There are no names there except the parties that he sold to, and that gives the numbers of the stores.

Q. The names that you speak of are simply the names and the numbers on certain streets in certain towns, are they?—A. In Troy; yes, sir.

Q. That does not apply to Albany at all, does it?—A. That is Troy.

Q. Troy is not Albany, is it?—A. No, sir.

Q. This is apparently all in the same handwriting, is it not?—A. I should judge it was.

Q. And appears to be addressed to the Tiona Oil Company?—A. Yes.

Q. And not signed by anybody?—A. It gives the evidence there of the stores where the sales were made.

Q. It simply says this: That the deliveries are to be made at certain stores, naming them?—A. Yes, sir.

Q. And that is all there is to it, isn't it?—A. Yes, sir.

Q. You can't learn from this contract who the parties to it
8074 are, can you?—A. No, sir. You could very easily, if you went there, to the numbers of those stores there; very easily.

Q. Yes, you could go and probably find out.—A. Very easily.

Q. You don't know whether that was ever accepted by the Tiona Oil Company, do you?—A. Whether they sold it at those prices?

Q. Whether this contract was ever accepted by them and acted upon.—A. I know that they sold at the cut prices.

Q. At what price did they sell?—A. 7 cents.

Q. And that was during what period?—A. That was sometime in 1905.

Q. Are you positive that they were selling at 7?—A. Yes, sir.

Q. How do you know that? From this contract?—A. Not only from that, but from the tickets which we had; and they delivered the oil and showed the prices on which they delivered the oil.

Q. And it was 7 cents?—A. Yes, sir.

Q. Can't you be mistaken about that?—A. I don't think I was mistaken at that time.

Q. Well, now; aren't you mistaken about the price?—A. About the 7 cents?

Q. Yes.—A. No, I don't think so.

Mr ROSENTHAL. The price at which they sold?

Mr. MORRISON. Yes.

Q. Are you sure you are not mistaken?

Mr. ROSENTHAL. He is not mistaken about that.

8075 A. I don't think so. They might not have lowered it all at one time at the same price; it might have been at one time 8 cents.

Q. I am talking about that contract.

Mr. ROSENTHAL. Oh, no, you are not; that is not your question. You are talking about the selling price at that time.

Mr. MORRISON. He says that they sold under that contract at 7 cents.

Mr. ROSENTHAL. No, he didn't. He said nothing of the kind. If you are going to enter into a general cross-examination of the witness, I want to complete my direct examination; because I propose to show that they did sell at 7 cents.

WITNESS. This was at 7½ cents, this contract, and afterwards they cut it to 7 cents.

Q. Now, you didn't mean, when you answered me 7 cents, then, that they were selling at 7 cents under that contract?—A. No, 7½ cents; whatever this contract says. But I do mean to say that they sold at 7 cents.

Q. Do you know whether or not they sold any at 7½?—A. I don't know whether they sold, I think they did, at 7½ cents.

Q. Now, do you mean anything about it?—A. Yes, I am sure that they sold some at 7½. I know in the first place they cut it to 8, and then they cut it to 7½, and then they cut it to 7 cents. I know that to be a fact.

Q. How do you know that?—A. I know that because we had the tickets to prove it.

8076 Q. You supposed, when you were answering my questions, didn't you, that this contract provided for a 7-cent rate?—A. I don't know that I did.

Q. Well, did you, or didn't you?—A. I don't know that I did, no. I was asked the question about the 7-cent price, and I said, yes, that they sold at 7 cents.

Q. You were not referring then to this contract when you were testifying to the 7-cent price?—A. No; I was testifying to a 7-cent price.

Mr. MORRISON. Defendants' Exhibit 86 is objected to on the ground that it is not signed by anybody; nothing upon the contract to show who the parties to it are, nor whether it ever went in force, or whether the contract was ever delivered; and there is no proof that this is a

correct copy of the contract from the photographer who made it or from anybody else.

Mr. ROSENTHAL. Do you want to stand on that last objection and compel us to produce the photographer? We can do it if you want us to, if you insist upon that objection.

Mr. MORRISON. I wouldn't stand on that if that was all there was to it.

Mr. ROSENTHAL. We can give you the name of the photographer and the name of the person who sent it on here. Why not eliminate that element from your objection so as to avoid the necessity of calling the photographer?

Mr. MORRISON. I am willing to do that, so far as the photographer is concerned.

Mr. ROSENTHAL. The balance of the objection stands, of course?

Mr. MORRISON. Yes.

8077 Direct examination (resumed) by Mr. ROSENTHAL:

Q. Mr. Drake, do I understand you to say that the Tiona not only sold oil at 7½ cents, but that they also cut the price to 7 cents?—A. To 7 cents; yes, sir.

Q. Now, Troy is only 5 or 6 miles from Albany?—A. That is all.

Q. And you endeavor to maintain the same prices at Troy that you do at Albany and vice versa, do you not?—A. Yes, sir.

Q. Because they are practically one and the same?—A. Yes, sir.

Q. As I understand you, it was because of the information that was conveyed to you by defendants' Exhibit 86, the information that you got from your employees, which they, in turn, got from the storekeeper, which satisfied you that the Tiona had made the cut, and, for that reason, you made your cut?—A. Yes, sir.

Q. The storekeepers in Troy measurably compete with the storekeepers in Albany, don't they?—A. Yes, sir.

Q. And defendants' Exhibit 86 gives the street number of every store that the Tiona was to supply with the 7½-cent oil, does it not?—A. Yes, sir.

Q. So that there will not be the slightest difficulty on the part of these keen Government officials to determine the authenticity of this information?—A. I don't think there would be any trouble about it; no.

8078 Mr. MORRISON. We don't have to determine that. That is up to you.

Mr. GRAVES. We object to being called "keen," too.

Q. Now, there are given here some seven or eight stores by street and number, are there not?—A. Yes, sir.

Q. Take 593 Second avenue, Lansingburgh. How is that situated with respect to Troy or Albany?—A. It is right near Troy; right adjoining Troy; right close to it.

Q. Adjoining Troy?—A. Yes, sir.

Q. And Waterford?—A. The same way.

Q. And Cohoes?—A. Very near there; not far away; I don't know the distance.

Q. Now, on the Government's exhibit they show a reduction of from 9 to 7 cents, the prevailing price being 9 cents, in February and 7 cents in March, 1905. That does not mean, does it, Mr. Drake, that there was one reduction made from 9 to 7 cents?—A. No, sir.

Q. It simply means that between those months, or within those months, there was a reduction of 2 cents from time to time in the prices?—A. Yes, sir.

Cross-examination by Mr. MORRISON:

Q. Were you selling at a loss in Albany when you were selling at 7 cents a gallon?—A. I don't recollect.

Q. Did you ever permit your price to get down so low that you sold at a loss?—A. Yes, sir; if we were forced to.

8079 Q. You followed the cut down to any point?—A. No, sir; not to *any* point.

Q. Below the cost of the product at times?—A. We do if we are forced to.

Q. You lost money a part of the time, didn't you, in 1905?—A. I don't recollect, sir.

Q. When did this competition that you speak of under this contract, and the other competition which you say actuated you in fixing the 7-cent price, cease to exist?—A. I don't recollect how long the prices were continued; some time.

Q. Did they continue during the entire year?—A. Oh, no, sir.

Q. They entirely disappeared before the year was over?—A. Yes; they concluded to put back the prices.

Q. And since that they have kept them back, have they, all the time?—A. No; not all the time.

Q. What is that?—A. I couldn't say as to that.

Q. Well, has the Tiona Oil Company cut the prices since 1905?—A. I don't know.

Q. Why don't you know as much about that as you do about 1905?—A. Because I haven't had anything to do with it.

Mr. ROSENTHAL. In that territory you mean?

WITNESS. In that territory; yes, sir.

Q. What territory do you mean?—A. I mean Albany and Troy.

Q. When did you cease to have that territory?—A. About two years and a half ago; somewhere along there; over two years.

8080 Q. Sometime during the year 1906?—A. 1905 or 1906, yes. I don't just recollect the date.

Q. How long did you have that territory?—A. I had it about three years.

Q. What territory have you now?—A. I have the western territory.

Q. Western New York you mean?—A. No, the Standard Oil Company of Indiana.

Q. You are not located in New York now?—A. I live here; yes, sir.

Q. But you don't have charge of any territory in New York?—A. No, sir.

Q. What proportion of the business in Troy and the other towns mentioned on that contract, Defendants' Exhibit 86, was done by you, and what proportion was done by your competitors, during the period that you had the 7-cent price?—A. I couldn't tell you the exact figures.

Q. Can you approximate it?—A. I couldn't give you the figures—the percentage that we have and the percentage that they have.

Q. You had nearly all the business, didn't you?—A. No, we didn't have nearly all; I suppose we had 60 or 70 per cent.

Q. You don't pretend to know what the per cent was?—A. I couldn't tell you offhand, no.

(The hearing was adjourned until the morning of Thursday, July 2, at 10.30 a. m.)

8081 ROOM 722, CUSTOM-HOUSE, NEW YORK CITY,
Thursday, July 2, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison, and Mr. J. Harwood Graves; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. F. L. Crawford, Mr Douglass Campbell, and Mr. W. Cleveland Runyon.

ANSON C. GRIFFEN, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is your name?—A. Anson C. Griffen.

Q. Where do you live?—A. Pittsfield, Massachussets.

Q. And your business?—A. Flour, feed, and grain.

Q. Have you been official sealer of the city of Pittsfield?—A. I have.

Q. That is a position that you are appointed to by whom?—A. By the mayor, and confirmed by the aldermen.

Q. When were you official sealer?—A. In 1904.

Q. Until when?—A. Until March, 1908.

Q. I show you two cans, marked Defendants' Exhibits 83 and 84. Did you ever make an official gauge of those cans?—A. I did.

8082 Q. When?—A. February 19, 1908.

Q. On each of those two cans there seems to be an official seal. Whose seals are those?—A. Those are my seals.

Q. Placed there when?—A. February 19.

Q. What year?—A. 1908.

Q. How did you gauge the cans?—A. I used a gallon measure furnished by the city, and filled it full of water and poured into the 5-gallon can five times.

Q. And what did you find the cans to gauge?—A. 5 gallons.

Q. Each?—A. Yes, sir.

Q. With respect to the collar that appears below the lip at the mouth of the can, how high up did you fill the cans?—A. To the top of the collar.

Q. In filling each of those cans, Defendants' Exhibits 83 and 84, to the top of the collar, you found that they held exactly 5 gallons, did you?—A. Yes, sir.

Cross-examination by Mr. MORRISON:

Q. You poured the water out of the can furnished you by the Standard?—A. Yes, sir.

Q. Haven't you any other way of gauging the capacity of a can?—A. No, sir.

Q. Who asked you to gauge those cans?—A. Mr. Akin.

Q. Who was present?—A. Mr. Akin, myself, and I think there was one other man.

8083 Q. What business do you say you are in now?—A. Flour, feed, and grain.

Q. Have you been in that business all the while since you have been in Pittsfield?—A. Yes, sir.

Q. Never have been in the oil business, have you?—A. No, sir.

8084 CHARLES H. TALBOT, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. Your name, please?—A. Charles H. Talbot.

Q. Where do you live?—A. I live in Pittsfield, Massachusetts.

Q. How long have you lived there?—A. Between 21 and 22 years.

Q. Were you ever the official sealer of that city?—A. I was.

Q. When?—A. Part of 1900 (I succeeded my brother, filling out his unexpired term), and 1901 and part of 1902.

Q. What is your business now?—A. At the present time I am employed by the Pittsfield Electric Company.

Q. Have you ever been employed by the Standard Oil Company?—A. Never was.

Q. Never have been in the oil business?—A. No, sir.

Q. Do you know a man by the name of Driscoll, a grocer in the city of Pittsfield?—A. I do.

Q. Did you know him in 1901 and 1902?—A. I did.

Q. Were you ever asked by Mr. Akin to gauge a gallon can which he had—which Mr. Driscoll had at his place?—A. I was.

Q. Tell us what you did in that regard.—A. Mr. Akin came to me and wanted I should go down to Mr. Driscoll's with him
8085 and take my standard can to test his can. I went down there and tested it and found that it didn't hold the required amount, and I told him I couldn't seal the same, that he would have to get another can.

Q. What was the trouble with Mr. Driscoll's can?—A. It didn't hold enough. It wasn't up to the standard.

Q. It didn't hold a full gallon?—A. It did not hold a full gallon.

Q. Your gallon can was what?—A. It was the standard measure furnished to me by the city.

Q. And using that as the standard, you measured Mr. Driscoll's gallon can and found that it was short?—A. Found that it was short; yes, sir.

Cross-examination by Mr. MORRISON:

Q. When did you gauge Mr. Driscoll's can?—A. It was in March, 1902.

Q. You say that it was in the month of March, 1902?—A. Yes, sir.

Q. Were you official sealer at that time?—A. I was.

Q. How long did you continue to be after that?—A. I think my term expired that month some time.

Q. Hadn't it expired before you actually gauged that can?—A. No, sir.

Q. You think it did expire during the same month?—A. I think so, yes.

8086 Q. Have you any record of your gauging that can? Did you make any record at the time?—A. I don't remember that I did.

Q. Don't you make a record of every can that you gauge and seal?—A. That was the way I generally did; yes, sir.

Q. It was your duty to do that, wasn't it?—A. Yes, sir.

Q. Why didn't you make a record, then, in this particular case?—A. Well, it didn't come up to the required amount, and I didn't seal it.

Q. Don't you make a record when you find a can that is in use that doesn't come up to the required capacity?—A. Yes, sir.

Q. Why didn't you in this case?—A. I don't know but what I did make it.

Q. Haven't you any recollection whatever about it?—A. I don't remember that I did.

Q. It was your duty to do it, wasn't it?—A. I presume it was.

Q. Now, isn't it true that the reason that you didn't make a record was because you were not at that time official sealer?—A. I was official sealer at that time.

Q. But you neglected your duty in this particular case?—A. The can didn't hold the required amount, and I didn't seal it.

Q. No; but answer my question. You neglected your duty in this particular case, didn't you?—A. I don't remember that I did.

Q. You have no recollection of making any record of it?—A. I don't remember that I made a record of it.

8087 Q. You kept a book, didn't you, in which you made a record of all the cans (or in which you were supposed to) that you examined?—A. Yes, sir.

Q. What has become of that book?—A. I presume I have it.

Q. Here?—A. No, sir.

Q. Do you keep it, or is it the property of the city?—A. It is the property of myself.

Q. Does every sealer keep a book of records after he goes out of office, or does he turn it over to the city?—A. We are paid by fees, and we keep our own records.

Q. Then, it is not an official record that you keep?—A. No, sir. Well, it is an official record.

Q. You are required by law, aren't you, to keep a record?—A. I am not positive about that.

Q. Who paid you the fee in this case?—A. I don't remember.

Q. Was it Akin?—A. No, sir; he didn't pay me.

Q. Was it Tuthill?—A. No, sir.

Q. At whose request did you make this examination?—A. At Mr. Akin's request.

Q. Did Mr. Driscoll pay you?—A. I don't remember that he did.

Q. He didn't ask you to make the test, did he?—A. No, sir.

Q. You went there at the request of an agent of the Standard Oil Company?—A. Yes, sir.

Q. Well, the person that requested you to go would be the person, naturally, to pay you, wouldn't he?—A. Yes, sir.

Q. Driscoll never asked your services, did he?—A. No, sir.

8088 Q. You knew at this time, didn't you, that there was a controversy over that can?—A. I did not.

Q. You didn't know about it?—A. No, sir.

Q. When did you first learn it?—A. The day that Mr. Akin came to me and asked me to go down to Mr. Driscoll's with him.

Q. Did he tell you what he wanted you to go for?—A. Yes; wanted me to take my standard measure.

Q. Did he tell you why he wanted you to measure another man's can?—A. He did not.

Q. Well, that was rather an unusual circumstance, wasn't it?—A. Not necessarily.

Q. Was it or wasn't it?—A. I don't consider it so.

Q. Were you in the habit of going at the request of one person to gauge the can of another person, a rival dealer?—A. I don't know that I was.

Q. Did you ever do that before in your life?—A. I don't know that I did.

Q. Did you ever do it since?—A. No, sir.

Q. It was itself a suspicious circumstance, wasn't it?

Mr. ROSENTHAL. Suspicious in what regard?

(The question was read.)

A. It might be.

Q. You thought so at the time, didn't you?—A. I don't remember.

Q. Didn't you think it a little strange that the agent of the Standard Oil Company should ask you to go down to a dealer and test his can?—A. I don't think I did; no, sir.

8089 Q. That is the only instance that you can recollect of, isn't it, in which you were requested by anybody to go into another person's place of business and test that other person's can?—A. I think it is the only instance; yes, sir.

Q. You have tested the cans of the Standard Oil Company there, haven't you?—A. Yes, sir.

Q. Who paid you your principal fees while you were sealer there?—A. The different storekeepers.

Q. Well, the Standard Oil Company?—A. They paid when I tested their cans and annexed my certificate, the same as all people do.

Q. How often did you test their cans?—A. Supposed to test them once a year.

Q. Was it your duty to test them?—A. I was supposed to test them once a year, at least.

Q. Every can in use?—A. Yes.

Q. In the city of Pittsfield?—A. Yes, sir.

Q. To go around and test them?—A. Yes, sir.

Q. Had you ever tested this can of Driscoll's before?—A. I don't know that I had; I don't think I had.

Q. It had been in use, hadn't it, several years?—A. I presume so; yes.

Q. How did it happen you hadn't tested it before?—A. Well, I don't know.

Q. Did you overlook it?—A. I might have.

Q. He was one of the dealers there in that city?—A. Yes, sir.

8090 Q. You knew he was handling oil?—A. Yes, sir.

Q. And using measures?—A. Yes, sir.

Q. Did you ever test anything for Driscoll before?—A. I don't remember that I did.

Q. How did you happen to skip him?—A. Some of the smaller stores—we were not particular about going to every one of them, although it was our duty to do it.

Q. Then you overlooked your duty in that respect?—A. I may have.

Q. How long has Driscoll been in business there?—A. I couldn't tell you.

Q. How long had he been in business before you tested this can, to your knowledge?—A. I couldn't tell you.

Q. Many years?—A. I couldn't tell you.

Q. Haven't you any idea at all about it?—A. I presumed he had been in business a number of years.

Q. You know him personally, don't you?—A. Yes; I have known him for a number of years.

Q. What did Akin tell you he wanted you to go down there and make that test for?—A. He didn't tell me for any purpose. He wanted me to go down there and test the can—take my official can and go down and test his can.

Q. Did you put any seal on the can?—A. No; I did not.

Q. Did you put any mark on it?—A. No, sir.

Q. Did you put anything on it to indicate that it didn't come up to the required capacity?—A. No, sir.

8091 Q. What did you do about it, then?—A. It didn't come up to the required capacity, and I told him that I couldn't seal it.

Q. You still permitted him to use the can?—A. No; I told him he should get another can.

Q. Did you keep track of it to see whether he did?—A. I went out of office just about that time; that is, within a very short time; that month. They are generally appointed in March or April. I think they have to be by April.

Q. How much was his can short?—A. I couldn't tell you exactly.

Q. Can't you give us some idea?—A. I should say from half a cup to a cupful.

Q. Is that mere guesswork, or do you have any recollection about it?—A. I have a recollection that it was short.

Q. And that is as far as you do remember?—A. Yes, sir; that is, to be exact.

Q. If you made any record of it, it would be necessary for you to put in the amount that was short, wouldn't it?—A. I don't remember that I made any record.

Q. Yes, you said that. But if you made a record, that would have been a part of it, wouldn't it?—A. Yes.

Q. You would have shown exactly how much it was short. Didn't you have curiosity enough to ask Mr. Akin why he came there and asked you to go into a rival dealer's store and gauge a can?

Mr. ROSENTHAL. He was not a rival dealer. Akin and Driscoll were not rival dealers, Mr. Morrison. Driscoll was a customer.

8092 (The last question was read.)

A. I did not.

Q. There wasn't a word said between you about the purpose of your visit there?—A. I don't remember that there was.

Q. Did you know whether Driscoll was buying his oil of the Standard at the time?—A. I didn't know anything about it, that I remember.

Q. Akin didn't tell you that?—A. I don't remember that he did.

Q. Who told you what can to gauge?—A. I presume Mr. Akin; I am not positive about that; but he wanted me to go down there to test the can, and I presume that he told me so.

Q. He walked right along with you, did he?—A. Yes, sir.

Q. Did he pick out the can for you to test?—A. I don't remember about that, but I presume he did.

Q. Did you see Driscoll?—A. I did.

Q. Did he give you the can?—A. I presume Mr. Driscoll gave me the can, because it was in his store.

Q. A moment ago you said you presumed Mr. Akin gave it to you.—A. Did I say that?

Q. I understood you so.—A. Well, possibly.

Q. You don't have any recollection about it, that is the truth of the matter?—A. I do. I do have a recollection about it.

Q. Well, then, who gave you the can?—A. I don't remember

8093 exactly who gave me the can.

Q. And you don't remember how much it was short?—A. I say I couldn't say exactly; no, sir.

Q. Can you describe that can?—A. I don't know that I could.

Q. Have you any recollection about it?—A. I haven't any definite recollection, excepting that it was a can that, I should say, had been in use a number of years.

Q. Was it a gallon can, or did it purport to be?—A. It was a gallon can, supposed to be.

Q. Did you learn that it had been subsequently tested and found to be a full measure by your successor?—A. No, sir.

8094 GEORGE TUTHILL, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. Your full name?—A. George Tuthill.

Q. Where do you live?—A. Springfield, Massachusetts.

Q. How long have you lived there?—A. I have lived there between 12 and 13 years.

Q. How large a town is Springfield?—A. 70,000 inhabitants.

Q. What is your business?—A. I am special agent in charge of the Springfield division of the Providence department of the Standard Oil Company of New York.

Q. Where does the oil come from that supplies Springfield?—A. From Wilsons Point.

Q. Where is Wilsons Point?—A. It is at South Norwalk, on the New York & New Haven road.

Q. You are the special agent there. Have you charge of any particular territory?—A. Yes, sir.

Q. What territory have you charge of?—A. I have charge of Hampton, Hampshire, and Franklin counties, the western portion of Worcester County, and the middle section of Berkshire County.

Q. Do you have local agents, then, that are under you?—A. Yes, sir.

Q. Special agents at various small towns throughout your
8095 territory?—A. Subagents.

Q. Were you in charge of that territory in 1902 and 1903?—A. Yes, sir.

Q. Do you remember when Hisgen Bros. first began selling oil at Springfield?—A. Yes, sir.

Q. When was that?—A. In 1902 they commenced selling at retail, and in February, 1904, they commenced selling at wholesale.

Q. Did you ever have any talk with Mr. Henry Hisgen with respect to his wishing to sell you the business of Hisgen Bros. at Springfield?—A. Yes, sir.

Q. Tell us about that, please—how it came about and what the talk was.—A. I called at his office, on Main street, as I had frequently done and——

Q. When was it?—A. That was in the fall of 1903, or summer of 1903.

Q. While they were still engaged in the retail business?—A. Yes, sir, while they were still engaged in the retail business.

Q. What do you mean by the retail business?—A. Selling to consumers; going from house to house peddling.

Q. Now tell us about the talk.—A. While I was in his office, Mr. Henry Hisgen said that he would like to sell out his business to the Standard Oil Company for $7,000. I told him that I would write to Mr. Watt and see what he said about it, and we would have a meeting.

Q. Who first made the suggestion concerning the sale?—A. Mr. Henry Hisgen.

8096 Q. Did you ask him whether he would sell——A. No, sir.

Q. Or did he ask you whether the Standard Oil Company would buy?—A. He asked me.

Q. Did he say why he wanted to sell?—A. Yes, sir.

Q. What did he say about that?—A. He said the climate didn't agree with him there and that he was sick of the business, and that he had bleeding of the lungs and wanted to get out of it.

Q. What did you do then?—A. I wrote to Mr. Watt.

Q. And then what followed?—A. Mr. Watt came, and we had a meeting at my residence. Mr. Hisgen—he asked him the price—and he said his price was $7,000, and Mr. Watt said the price was too high. Then Mr. Henry Hisgen said if the Standard didn't buy them they would start and build stations at Hartford, Pittsfield, and various other New England towns.

Q. And do what?—A. In competition with the Standard Oil Company.

Q. What did Mr. Watt say in reply to that?—A. Then he wished to reserve a large lot of 5-gallon cans and his office furniture, and Mr. Watt broke off the negotiations, nothing was done, and he refused to buy.

Q. Do you remember the Consumers Oil Company, run and owned by Messrs. Cordner & Slater?—A. Yes, sir.

Q. Where were they doing business?—A. In Springfield.

Q. When?—A. In 1901.

8097 Q. What became of that business?—A. Mr. Slater bought out Mr. Cordner's interest in July, 1901.

Q. And then what became of it?—A. He continued the business for some months, and then Mr. Hisgen took charge of it.

Q. And how long did the Hisgens have charge of it?—A. The retail business?

Q. Yes, sir.—A. I should think about a year.

Q. And then what became of it?—A. They still kept it. I guess they have part of it yet.

Q. What became of Cordner?—A. He went out of business then, and started in again in October.

Q. Of what year?—A. 1902.

Q. And from whom did he buy his oil?—A. He bought it from the Standard Oil Company.

Q. Under what name did he do business?—A. S. J. Cordner Company.

Q. State whether or not the oil which the Standard Oil Company sold to Cordner at that time was sold at the regular standard prices.—A. Yes, sir.

Q. Was any special concession made to Cordner for the purpose of enabling him to compete with the Slater or Hisgen business?—A. No, sir.

Q. He was treated exactly the same as any other peddler was?—A. He was treated exactly the same as any other peddler was coming to our station for the oil.

Q. Did the Standard Oil Company pay for the construction of Cordner's equipment or any part of it?—A. No, sir.

8098 Q. Furnish him any money at all in that regard?—A. Never.

Q. Do you know of any Standard Oil New York lawyer that participated in any of those Cordner-Slater deals?—A. No, sir.

Q. Well, did they, or did they not?—A. No, sir.

Q. Or in Cordner's purchase of Carpenter's outfit?—A. No, sir.

Q. Well, you say that Mr. Hisgen or the Hisgens started in the wholesale business in February, 1904?—A. Yes, sir.

Q. Did you at that time or any other time, in any talk with Hisgen or anybody else, threaten to drive them out of business?—A. No, sir.

Q. Or did you say to Hisgen or anybody else that you had instructions from 26 Broadway to put them or him out of business?—A. No, sir.

Q. Did you ever have any instructions from 26 Broadway about the matter at all?—A. Never; or any other man.

Q. Did you say to him at that time and place, or at any other time or any other place, "I have instructions from 26 Broadway to tell you that we are not going to lose a gallon of oil in this town, or a gallonage, understand, and we are going to maintain that gallonage even if we have to sell it below cost and drive you out of the business?"—A. No, sir.

Q. Did you say anything like that?—A. No, sir.

Q. Or any part of it?—A. No, sir.

Q. Did Hisgen tell you at that time that he was aware of the fact that the Standard Oil Company had caused thousands of

8099 financial wrecks throughout the country, and that he didn't know but what they (the Hisgens) would go the same way, but that he was born in the State of Indiana, not far from Missouri, and that they had to prove it?—A. He never told me anything about financial wrecks or where he was born.

Q. Did he say that to you, or anything like that?—A. No, sir.

Q. Was Mr. Kimball, who was oil inspector at Springfield, ever connected with the Standard Oil Company?—A. Never.

Q. Was Easthampton, Massachusetts, in your territory?—A. Yes, sir.

Q. Did the Hisgen Brothers do business there?—A. Yes, sir.

Q. About when did they start there? About December, 1903?—A. The first that I had any notice of it was in December, 1903.

Q. What was the Standard price at that time?—A. 11½ cents.

Q. Do you know, from any reports which you received from your men, at what price the Hisgens started to sell oil there at Easthampton?—A. They started to sell oil there at 9½ cents at that time.

Q. What did you do about that?—A. I reported it to Providence.

Q. What did you do about meeting the cut?—A. We met the cut later.

Q. Do you remember the names of any of the dealers that they sold oil to at that time at 9½ cents?—A. Yes, sir; Mansfield & Roberts; Reese & Friday; I think Collins & Company.

8100 Q. Brown & Son?—A. Brown & Son.

Q. McCandless?—A. McCandless.

Q. Do you remember of their making any cut in the month of April, 1904, at Easthampton and Northhampton?—A. Yes, sir.

Q. What can you say about that?—A. Our price at that time being eight and a half cents, Mr. Hodgkins reported to me that they offered Mansfield & Roberts oil at seven and a half cents and some of the other trade at eight cents.

Q. What did you do in the way of meeting that cut?—A. We met the cut later.

Q. In April, 1905, did you receive any report of any cuts made by them at Easthampton?—A. 1905?

Q. Yes.—A. What was that other? 1904?

Q. Yes, sir.—A. Well, I had reference to 1905.

Q. You had reference to 1905?—A. Yes, that eight and a half cent price.

Q. So that in response to my questions concerning 1904, you mean 1905, instead of 1904?—A. Yes.

Q. I show you a letter dated April 12, 1905, purporting to be signed by you and written to one P. M. Watt, at Providence. Will you please state whether that letter was written by you on the day of its date?—A. Yes, sir; April 12, 1905.

Q. And that was a letter written at that time in the ordinary course of business?—A. Yes, sir.

Q. Whose signature is attached to it?—A. Mine.

Q. In whose handwriting is the body of the letter?—A. Mine.

Mr. ROSENTHAL. I offer it in evidence and ask that it

8101 be marked "Defendants' Exhibit 87."

(The letter was so marked, and is as follows:)

"George Tuthill.

"STANDARD OIL COMPANY OF NEW YORK,
"SPRINGFIELD STATION,
"*Springfield, Mass., 4/12/05.*

"Mr. P. M. WATT, *Providence, R. I.*

"DEAR SIR: Mr. Hodgkins reports this morning as follows: 'Mr. Hisgen was in Easthampton yesterday canvassing the town. Said he was going to send his wagon up there next week, and offered to

sell the large store of Mansfield & Roberts at 7½. Some of the others he offered to sell at 8¢.'

"He can not be doing this for a profit, but merely trying to break our price. I would advise maintaining our price, and when he finds out it don't disturb us he will get tired of the 18-mile trip and quit.

"Yours, truly,

"GEO. TUTHILL."

(Pencil notation across top of letter: "To E. Halsey, 4/13/05.")

Q. You have just read that letter, have you?—A. Yes, sir.

Q. After having examined that letter, what do you say as to the price which the Hisgen Brothers made at that time, and what you did in regard thereto?—A. Our price at that time was 8½ cents. I wrote that letter to Mr. Watt, but we maintained our price for a while, but we were obliged to reduce it to meet their price, to meet competition. We reduced it half a cent shortly after that, making our price 8 cents.

8102 Mr. ROSENTHAL. I offer that letter in evidence, for the purpose of showing that it was the basis of the witness' present recollection of the facts as they existed at that time, and as an illustration of the evidence upon which he acted at that time, not as proof of the substantive fact as to what the prices were.

Mr. MORRISON. Objected to as immaterial and incompetent.

Q. Now, when the Hisgen Brothers first came into Springfield, wholesaling oil, what was the Standard's wholesale price?—A. 11 cents.

Q. Did you learn at what price the Hisgens began selling their oil in Springfield?—A. Yes, sir.

Q. At what price was it?—A. 10½ cents.

Q. And what did you do?—A. I reported it to Mr. Watt.

Q. And then what?—A. Then he authorized me to reduce the price in order to meet the cut.

Q. And to what did you reduce the price?—A. Reduced the price half a cent.

Q. Down to the price which had been made by Hisgens?—A. Yes, sir; 8½ cents.

Q. And how long did that price continue?—A. I can't exactly say, but a short time, when they——

Q. Some weeks?—A. A few weeks, possibly a month.

Q. And then what happened?—A. And then it was reported to me that they were cutting our price and selling oil for 10 cents.

Q. And what did you do?—A. We met the cut, in order to
8103 hold our trade.

Q. And how long did that cutting process continue at Springfield?—A. It continued down until the price got to seven and a half cents.

Q. And how long did it take for the price to get to seven and a half cents?—A. I should think nearly a year; somewhere around a year.

Q. In cutting the price from eleven cents to seven and a half cents who made the first cut?—A. The Hisgen Brothers.

Q. And you followed them down?—A. We followed them down.

Q. Now, thereafter a reduction was made by you from seven and a half to seven cents. Why was that done?—A. That was done on authority from Providence; I don't know for what reason.

Q. Was that a general cut throughout the entire territory, of a half cent?—A. That was a general cut throughout my entire division.

Q. I mean a general reduction of prices throughout the entire territory?—A. Yes, a general reduction of half a cent throughout my division.

Q. Did that last half cent reduction have any relation at all to the Hisgen Brothers?—A. No, sir.

Q. That was a general reduction throughout the entire Providence territory?—A. I don't know; it was throughout my division.

Q. How far is Easthampton from Springfield?—A. Ten miles, I should think.

8104 Q. Where does Easthampton get its oil from?—A. From our station at Northampton.

Q. How far is Northampton from Easthampton?—A. About four or five miles from the station.

Q. You have already testified that the Hisgens were doing business at Easthampton also?—A. We barreled oil at that time.

Q. Now, there has been an advance in price from 7 cents up to 8½, has there not?—A. Yes, sir.

Q. Did Mr. Hisgen have anything to do with that advance?—A. He had nothing to do with it.

Q. Did he have any talk with you concerning an advance of the price?—A. He did.

Q. Tell us about that.—A. He told Mr. Inman, my bookkeeper, and Mr. Inman told me——

Mr. Morrison. That is objected to as purely hearsay.

Q. No—did you talk with Hisgen yourself about it?—A. Afterwards; yes, sir.

Q. Who is Inman?—A. My bookkeeper.

Q. And how was the meeting between you and Hisgen brought about?—A. By Mr. Inman reporting to me that he wished—he wanted to know from Inman if he could get the price raised.

Q. That Hisgen wanted to know, from Inman, if he could get the price raised?—A. Yes, and Inman told me.

Q. And thereupon——A. And thereupon I called Mr. Hisgen on the telephone and told him to come and see me.

8105 Q. And he did so?—A. He did so.

Q. And what was the talk?—A. He said that oil was very low, and he wanted to know if he could get the price raised, and I told him I could make no agreement, I didn't know anything about it, but I would write to Providence and see what they would do.

Q. Did you write Providence?—A. Yes, sir.

Q. And did the price go up thereafter?—A. Not at that time; no, sir.

Q. How long afterwards?—A. Probably two or three weeks afterwards, possibly a month. I don't know as to the exact date.

Q. You yourself have nothing to do with the fixing of prices, have you?—A. No, sir.

Q. You have no authority in that regard?—A. No, sir.

Q. You get your price from Mr. Watt——A. Yes, sir.

Q. Who is your superior officer?—A. Yes, sir.

Q. And he is located at Providence?—A. Yes, sir.

Q. Your division is in his general district?—A. Yes, sir; his department.

Q. Do you remember a talk that you once had with a man by the name of Allen?—A. Yes, sir.

Q. Did you ever offer to sell him oil at 6 cents a gallon?—A. No, sir.

Q. What did you say about that?—A. We met at the hotel, and I went in; he was taking lunch. And I said, "Hello, Allen!
8106 you are not buying any oil of me now?" He said, "No." I said, "I don't suppose you would if I would sell you oil for 6 cents a gallon," and he said, "No, Hisgen is buying hay of me." And I said, "Oh, I know that. I didn't expect to sell you." That is all there was to that.

Q. That is all the conversation you ever had with him?—A. Relating to that conversation generally.

Q. In your territory, during the years that the Hisgens have been doing business there, who is it that has cut the prices in the first instance, generally throughout the territory?—A. Why, reported to me that the Hisgens did.

Q. You had the business when they came in there?—A. All of it; yes, sir.

Q. And in order to get the business away from you they cut the prices?—A. Yes, sir.

Q. And in order to get the business back, or hold what you had, you met those cuts?—A. We were obliged to do so to hold the trade.

Cross-examination by Mr. MORRISON:

Q. You acted, in lowering and raising the prices, on the reports of somebody that were made to you, did you not?—A. Yes, sir.

Q. Who made these reports to you?—A. My drivers.

Q. And were they reports in writing?—A. No, sir.

Q. Simply the verbal statement of a driver?—A. Yes, sir.

Q. You kept no record of it?—A. No, sir.

8107 Q. And have no record of it now?—A. No, sir.

Q. You didn't go around to the dealers, yourself, to ascertain what the Hisgens were selling for or offering to sell for, did you?—A. No, sir.

Q. You know, don't you, that it is quite common, where there are two rival dealers, for the storekeepers to pretend they can get it cheaper of one than they can of the other, for the purpose of beating down the price?—A. O, I don't know as I do.

Q. You never ran across that sort of an experience?—A. No, sir.

Q. So when a driver would come in and report to you verbally that somebody had told him that the Hisgens were selling at a price lower than yours, a cut would immediately follow?—A. Not immediately.

Q. Well, as soon as it could come around through the various channels?—A. Yes, sir.

Q. And you acted on that exclusively?—A. I did.

Q. You were right there in Springfield yourself?—A. Yes, sir.

Q. You were acquainted with all the merchants and dealers there?—A. Not all of them, no.

Q. Most all of them?—A. No.

Q. Well, you were quite closely in touch with the trade there, weren't you?—A. Yes, sir.

Q. How long have you been there?—A. I have been there
8108 between twelve and thirteen years.

Q. It is part of your business to keep track of the trade, isn't it?—A. I don't know as it was.

Q. What was your business there?—A. My business was to oversee the whole thing, and sell all the oil I could.

Q. Did you have daily reports from the drivers?—A. Yes, sir.

Q. And yet those reports, as I understand you, were entirely verbal?—A. Yes, sir.

Q. Was there any period of time that your price was below the Hisgens?—A. Well, when our price went down from seven and a half to seven cents we were below them.

Q. How long did it remain at seven and seven and a half cents?—A. How long did it remain at seven cents?

Q. At seven cents, first.—A. I don't remember just exactly how long.

Q. About how long? Was it a year or two?—A. No.

Q. While you were selling at seven, what were the Hisgens selling for?—A. Seven and a half.

Q. When did you put the oil down to seven?—A. 1906 or 1907, I don't remember exactly.

Q. Wasn't it 1905?—A. 1907, I think.

Q. Wasn't it 1905?—A. It may have been; I don't know.

Q. And there was pretty heavy competition there at that time, wasn't there?—A. I don't know as there was very heavy.

Q. Any independents there besides the Hisgens?—A. Not that I know of.

8109 Q. What percentage of the business did the Hisgens have at the time when you put the oil down to seven cents?—A. I don't know.

Q. Did they have as much as thirty per cent?—A. I don't know.

Q. Haven't you any idea about it at all?—A. No, sir.

Q. Kept pretty close track, didn't you, of what your competitors were doing?—A. Tried to.

Q. You made reports of what they were doing, didn't you?—A. I tried to.

Q. Well, you did, didn't you?—A. I made some reports of what I thought they were doing; I wasn't positive.

Q. Did you make regular periodical reports?—A. No, sir.

Q. Or did you report just when the spirit moved you?—A. Just when the spirit moved me.

Q. Do you know anything about the cost of oil?—A. No, sir.

Q. Were you making a profit when you were selling oil at seven cents a gallon?—A. I don't know.

Q. You haven't any knowledge of that?—A. No, sir.

Q. Your superior officers didn't see fit to keep you posted on whether or not you were making a profit?—A. No, sir.

Q. Didn't you learn from any source that you were losing money during the entire year of 1905, except the last month, and that then there was only five mills a gallon profit?—A. No, sir.

Q. Did you know that?—A. No, sir.

Q. Now, take the year 1904; what were you selling for in
8110 January of that year?

Mr. ROSENTHAL. Where, Mr. Morrison?

Mr. MORRISON. Springfield.

A. I think it was 11½ cents in January.

Q. How about February and March?—A. 11 cents.

Q. What were the Hisgens selling for then?—A. 10½.

Q. They were selling below you, then, at that time?—A. Yes, when they started in.

Q. When did they start in?—A. February, 1904.

Q. And they started in selling at 10½?—A. Yes, sir.

Q. How long did they continue to sell for 10½?—A. I couldn't tell you exactly how long.

Q. About how long?—A. I don't know.

Q. Several months?—A. No; I don't think it was several months.

Q. There was a time in 1905, was there not, when you advanced the prices of oil?—A. Yes, sir.

Q. When was that?—A. It was in the fall of 1905.

Q. Weren't you still selling lower than the Hisgens were after you made the advance?—A. No.

Q. Are you sure about that?—A. We were higher after we made the advance from 7½ to 8½.

Q. Higher than whom?—A. Higher than Hisgen Brothers, for the period of about two or three weeks.

Q. Then what happened?—A. Then they commenced to sell at our price—8½ cents.

8111 Q. Was that after you had had this conference with Mr. Hisgen?—A. Yes, sir.

Q. Did you agree upon the price that you would sell the oil for?—A. No, sir; we raised the price two or three weeks before they did; about two weeks, I think.

Q. When was it that you were informed that the Hisgens were selling at seven and a half cents at Easthampton?—A. In April, 1905.

Q. What were you selling for in Springfield at that time?—A. I think eight cents; seven and a half or eight cents.

Q. Weren't you selling at seven?—A. I don't know; I don't remember.

Q. How is that?—A. No; I don't think we were. Our price there was eight and a half.

Q. Well, are you sure of that?—A. No; I am not sure of it; but I think it was about eight cents.

Q. The records here show that it was seven cents that you were selling oil for at Springfield.

Mr. ROSENTHAL. No.

WITNESS. At that time?

Mr. ROSENTHAL. You are mistaken.

WITNESS. In April, 1905?

Mr. MORRISON. They are here, sir; and I am reading from petitioners' Exhibit 635.

Mr. CAMPBELL. That is the average.

Mr. ROSENTHAL. That purports to be the first of the month.

Mr. MORRISON. And there were nine months there that it
8112 ran right along at the same price without any change.

Mr. ROSENTHAL. There may have been changes during the month from time to time.

Q. Did you change during the month of March? Was the price the same during that entire month?—A. What year?

Q. 1905.—A. I don't remember.

Q. Was it the same in April, May, June, July, and August, clear up to October?—A. I don't remember; I can tell from the records in my office. I haven't it in mind.

Q. You said you were authorized to cut the price to seven cents.—A. Yes, sir.

Q. How long did you keep it there?—A. I don't know.

Q. About how long?—A. I don't remember.

Q. Several months?—A. I don't remember. I can't tell without I see my records.

Q. Or was it several days?—A. It was several days; possibly several months. I don't remember the time.

Q. You haven't any recollection?—A. No; not as to the time.

Q. You don't pretend, do you, to remember the price at which you sold oil at various times? You don't carry that in your memory, do you?—A. I don't carry it in my memory; no.

Q. You would have to rely solely upon records for that, wouldn't you?—A. Sure.

Q. You don't know anything more about the Hisgen's prices than you do about your own, do you?—A. Only what I was told by my drivers.

Q. Do you remember now what your drivers told you they
8113 were selling oil for?—A. When?

Q. At any particular time?—A. Yes.

Q. When?—A. When they commenced to sell; when they went into business, they told me they were selling for ten and half, in February.

Q. That was when?—A. 1904.

Q. The record shows, petitioners' Exhibit 635, that on the first days of March, May, June, July, August, and September you were selling oil in Springfield at seven cents. Do you know whether or not you sold it for that price during each entire month?—A. No; I don't. I suppose we did, though.

Q. Did you pay any rebates or drawbacks to any of these dealers during that period?—A. I don't remember that I did.

Q. Do you remember that you didn't?—A. I remember that I didn't during the period.

Q. How is that?—A. No; I didn't.

Q. Did your men?—A. Not that I know of.

Q. Would you know it if they did?—A. I would probably know it if they did.

Q. Do you swear now that it was not done during that period?—A. No; I won't swear it wasn't done during that period.

Q. You won't swear that it wasn't done during any period, will you?—A. No.

Q. What you mean by the prices you have given was the open price to the trade?—A. Yes, sir.

Q. You heard Mr. Akin's testimony here, didn't you, that he made complaints to you?—A. Only part of it.

8114 Q. Well, you heard that part of it, didn't you?—A. Yes, sir.

Q. You heard him say that he was making complaint to you because you were selling to different persons at different prices?—A. I don't remember of his making complaint to me.

Q. You have no recollection of it?—A. No, sir. I don't think he ever made a complaint to me of that kind.

Q. Do you swear that he didn't?—A. I will swear that he didn't make a complaint to me of that kind.

Q. That he never made any such complaint?—A. No, sir.

Q. And it never came to your ears that that sort of practice was going on?—A. From Akin to me?

Q. From anybody.—A. No; Akin never told me anything about it.

Q. Did you know that Akin was dissatisfied on account of that?—A. No, sir; never did.

Q. Never learned that until yesterday?—A. No, sir; never learned it until yesterday.

8115 Q. What were you selling oil for in Holyoke in 1906?—A. The same price as at Springfield.

Q. Exactly the same prices?—A. Yes, sir.

Q. You are sure about that, are you?—A. I am pretty sure; they were generally the same.

Q. You mean that, as a general proposition, it was the same, or that you remember that particular town?—A. I don't remember the particular time.

Q. Town.—A. The price there has always been about the same as at Springfield.

Q. Were you selling for a higher or lower price during that year in Holyoke than the Hisgens?—A. What year is that?

Q. 1906.—A. The same price.

Q. Selling at the same price?—A. The same price as Springfield?

Q. No, no; were you selling at Holyoke higher or lower than the Hisgens were?—A. Oh, higher or lower than the Hisgens were in Holyoke?

Q. Yes.—A. I don't know about that.

Q. Well, did you get all of their customers away from them in Holyoke?—A. What?

Q. Didn't you get all of their customers away from them in Holyoke?—A. Whose?

Q. Hisgens'.—A. I didn't know they had any there. We had them all.

Q. They didn't sell any oil in Holyoke in 1906?—A. Oh, they may have sold a little. They may have gone up there with their
8116 wagon from Springfield, but I didn't pay much attention to it.

Q. How far is it?—A. Eight miles.

Q. Didn't the Hisgens have more than twenty-five customers in Holyoke in 1906?—A. I don't know that they did.

Q. How many customers did you have there?—A. I don't know. I never counted them.

Q. Well, haven't you any idea about it?—A. No; I never counted them and couldn't give you an idea how many we had.

Q. Didn't you get more than twenty-five of the Hisgens' customers away from them in Holyoke during the year 1906 by cutting the prices below them?—A. No.

Q. Now, you are sure about that?—A. Yes.

Q. You didn't change your price at Holyoke in 1906, did you?—A. Why, I presume we did when we changed it in Springfield; we changed both at the same time.

Q. Well, did you, now, or did you not?—A. I don't know; I don't remember about that until I see my records; then I could tell you.

Q. The interview that you had with Hisgen at your house was the result of an interview, as I understand you, that you first had at Hisgen's office?—A. Which interview was that?

Q. The first interview you testified about.

Mr. ROSENTHAL. You mean concerning the purchase?

A. You mean concerning the sale to Henry Hisgen?

Q. Yes.—A. That is the first I knew of it.

Q. The first you knew of it you called at his office?—A. We
8117 called at his office. We were very friendly, and I went in there frequently as I passed his office.

Q. You were a frequent caller there?—A. Yes; social call.

Q. And when you got in there the subject was taken up?—A. Yes, sir.

Q. You hadn't any idea that any such subject as that was going to be taken up when you went there?—A. No; I didn't.

Q. You never had discussed it before?—A. I don't think I did; I don't remember.

Q. And the next meeting was held at your house, was it?—A. Yes, sir.

Q. At whose invitation?—A. Whose invitation?

Q. Yes.—A. The invitation of Henry Hisgen.

Q. Henry Hisgen invited himself to your home?—A. No. At my house it was at my invitation. I asked him to call, that I would meet him there.

Q. And when did you say that conversation took place, the first one that you had in the office?—A. It was in 1903.

Q. Now, this Consumers Company was run by Cordner and Slater, wasn't it?—A. Yes, sir.

Q. First?—A. Yes, sir.

Q. And of whom did they buy their oil?—A. Bought their oil of the Standard Oil Company of New York.

Q. During the entire time that Cordner and Slater ran it?—A. Yes, sir.

Q. Were they in any way connected with the Standard, except as purchasers of oil?—A. No, sir.

8118 Q. Then, as I understand you, Slater bought Cordner's interest in the business?—A. Yes, sir.

Q. And continued to run it along?—A. Yes, sir.

Q. And did he continue to buy oil of the Standard?—A. Yes, sir; for a short time.

Q. For how long after he bought it out?—A. Why, several months, until he got largely in our debt.

Q. When did he cease to buy of the Standard?—A. He ceased to buy some time in the fall of 1901, I think, or 1902; 1901.

Q. And at that time you had no competition to speak of in Springfield?—A. No, sir.

Q. How large a city is Springfield?—A. About seventy thousand.

Q. And did he quit buying oil of you before the Hisgens came there?—A. Yes, sir.

Q. He commenced to buy of Hisgens, didn't he?—A. Yes, sir.

Q. How much did he owe you?—A. $1,525, I think it was.

Q. Did you have any security on his property?—A. No, sir.

Q. Did you ever get it?—A. A part of it.

Q. Did any one representing your company have a chattel mortgage on any of this property belonging to Slater?—A. No, sir.

Q. Did your company realize anything by a sale of property under a chattel mortgage?—A. No, sir.

Q. Do you know who did hold this chattel mortgage on this property?—A. Cordner held it.

8119 Q. Cordner? For the purchase price?—A. Purchased by Slater.

Q. How is that?—A. Slater purchased it and gave a chattel mortgage to Cordner.

Q. For the purchase price, I suppose?—A. I don't know. I understood it was $3,000.

Q. What I want to get at, Mr. Tuthill, is whether or not your company in any way got any security when that transfer was made?—A. Not a penny.

Q. And you didn't at any time realize anything on account of the foreclosure of that chattel mortgage?—A. No, sir. I didn't know it ever was foreclosed; didn't know anything about it.

Q. That mortgage was on the property, wasn't it, when the Hisgens bought the Consumers Oil Company plant?—A. I heard so. I didn't know of my own personal knowledge.

Q. Were you present when that mortgage was finally settled up and adjusted?—A. No, sir.

Q. Do you know Mr. Kimball?—A. Yes, sir.

Q. You said he was in no way connected with the Standard Oil Company.—A. He said what?

Q. You said he was not connected, I believe, with the Standard Oil Company.—A. He is not connected with the Standard Oil Company.

Q. Was he doing business with them about that time?—A. No, sir.

Q. Selling them barrels?—A. He was selling the Standard
8120 Oil Company barrels. That is his business, buying and selling oil barrels.

Q. Whom does he buy from?—A. From the storekeepers and anybody that wishes to sell them.

Q. And turn them over to your company?—A. No, sir. He comes to us and sells, if he can get a better price than from anybody else.

Q. You have a fixed price which you pay him for them?—A. Yes; whatever the market price is.

Q. How long has he been dealing with you in that way?—A. Ever since I have been there.

Q. Did you have any interest in Cordner's affairs with the Standard out there?—A. No, sir.

Q. Cordner bought out a man by the name of Carpenter, I understand?—A. Yes, sir.

Q. Did you have any interest in that deal?—A. No, sir.

Q. Were you present when it was closed up?—A. No, sir.

Q. Did Kimball represent you in any transaction that you had with the Hisgens?—A. No, sir.

Q. Or any negotiations?—A. No, sir.

Q. In reference to a transaction in East Springfield?—A. No.

Q. West Springfield, I mean.—A. No, sir.

Q. Did you have some property in West Springfield?—A. Yes, sir. The Standard Oil Company of New York did.

Q. What became of that property?—A. It was torn down?

Q. Did you have any negotiations about the sale or disposition of that property?—A. No, sir. Mr. Kimball came to me and wanted to know if I would give him a price on it, that he wanted it to store his oil barrels in, as it was near the railroad.

8121

Q. Did you know whether or not he wanted it personally, or whether he wanted it for somebody else?—A. No, sir. I supposed he wanted it personally; that is what he told me, that he wanted it to store his barrels in.

Q. You never directed him to negotiate with anybody for you or for the Standard, did you?—A. Never.

Q. You did have a talk with Mr. Allen at a hotel, didn't you, in Springfield?—A. Yes, sir.

Q. And you did talk about prices?—A. Why, no——

Q. Well, you suggested to him that he would not buy of you if you sold him even at 6 cents?—A. Yes, if I did.

Q. You made that statement to him there?—A. I said, "I don't suppose you would buy oil of me if I would offer it to you for 6 cents." Those are the words.

Q. That is what you said there?—A. That is just what I said.

Q. Did Allen give an interview to some newspaper about that?—A. I don't know whether he gave the interview or how that came about. It was published in the newspaper.

Q. Did you go back and talk with Mr. Allen about it afterwards?—A. Yes, sir.

Q. You wanted him to retract it, didn't you?—A. I told him it wasn't so and asked him if he would sign a statement that it wasn't so.

Q. And he refused to do it—A. He refused to do so. I laughed and said if he wouldn't do it I would probably lose my job.

8122

Q. And he insisted that the interview was correct, didn't he, as reported in the newspaper?—A. Oh, yes, he insisted, and I insisted it was not.

Q. So that there was a controversy between you and him at that point?—A. Yes, sir.

Q. Well, you were afraid you would lose your job if you didn't get that retraction, weren't you?—A. Not very much afraid; no, sir.

Q. Well, you told him you might lose your job?—A. In a joking way.

Q. To you it was a joke, was it?—A. A joke; yes.

Q. What was your purpose in going to get him to retract it if it was a joke?—A. Why, it was a joke in my saying I was afraid I would lose my job.

Q. Well, you say you weren't afraid?—A. What's that?

Q. You say you weren't very much afraid of losing your job?—A. No, sir; I wasn't afraid at all.

Q. What did you want a retraction for? Who wanted you to get a retraction of that statement?—A. Nobody only myself.

Q. You saw it in the paper?—A. I saw it in the paper, yes, and I knew it wasn't so, and I thought he would probably retract it in the papers that went out to the public that I wanted to sell him oil for 6 cents a gallon, which I never did.

Q. And you wanted to get a retraction to print in the paper to contradict the idea that that publication had given out?—A. That is the idea.

8123 By Mr. CRAWFORD:

Q. Mr. Kimball, in the business of selling barrels, did not deal exclusively with the Standard Oil Company, did he?—A. No, sir; he sold barrels to Hisgen. He sold them in New York to different parties, wherever he could get the best price.

By Mr. MORRISON:

Q. You looked after the financial end of the business there at Springfield, didn't you?—A. Looked after the financial end?

Q. Yes.—A. No, sir.

Q. You received the money that was turned in by the drivers, didn't you?—A. No, sir.

Q. What was done with it?—A. It was turned in to the cashier.

Q. Who was the cashier?—A. Mr. Inman.

Q. Was he under you in the same office?—A. Under me; yes.

Q. If any money was paid out, who issued the checks?—A. We didn't pay out any checks only through the cashier. He handled that. I had nothing to do with it.

Q. Did he issue checks and settle accounts without your knowledge?—A. Accounts were settled in Providence, all but little petty accounts.

Q. Did the checks issue from Providence?—A. Yes, sir.

Q. If any rebates were paid by checks, who would issue those checks?—A. Who would issue the checks?

Q. Yes, whose duty would it be to issue checks for that kind
8124 of payments?—A. Those would be issued by the cashier, I suppose.

Q. At Providence?—A. At Springfield or Providence, I don't remember.

Q. Well, which would it be if it was in the Springfield territory?

Mr. CAMPBELL. He hasn't testified that any such checks were issued.

Mr. MORRISON. I am aware of that.

A. I don't know who would issue them. I never issued any.

Q. Is Cheshire within the Springfield district?—A. Yes, sir; it is in the Pittsfield district.

Q. It is under Springfield, isn't it?—A. Yes, sir.

Q. Now, if there were any checks issued to pay rebates there, whose duty would it be to issue those checks?—A. Akin, I think, issued the checks. It would be his duty.

Q. Was Akin authorized to draw checks on the bank account?—A. No; only on his petty account.

Q. Would that include a rebate account?—A. No.

Mr. ROSENTHAL. Was there any rebate account?

WITNESS. No; we had no rebate account.

Q. You had none?—A. No.

Mr. ROSENTHAL. You don't want to answer a catch question like that, assuming that there was.

Q. Here is what I am asking you, and I am not assuming anything: Whether or not, if rebates were paid, the checks would be issued by you, or by Akin, or by somebody at Providence?

Mr. CRAWFORD. He said rebates were not paid.

8125 Mr. MORRISON. No; he doesn't say so.

Mr. CRAWFORD. He has practically said so.

Mr. MORRISON. He doesn't say so, and he won't say so.

Q. The following question was read: Here is what I am asking you, and I am not assuming anything: Whether or not, if rebates were paid, the checks would be issued by you, or by Akin, or by somebody at Providence?—A. I haven't said that any rebates were paid.

Q. Will you answer the question?—A. Why, I don't know anything about it. No rebates were paid that I know anything about.

Q. Do you know anything about a rebate paid to George Z. Dean at Cheshire?—A. George Z. Dean, that was a special sale of a certain number of gallons of oil at a certain price.

Q. Do you know about that transaction?—A. Why, certainly I do.

Q. Didn't you pay him back for oil that he had already received and paid for? Didn't you make a rebate back to him?—A. Well, let me explain it to you, will you?

Q. Do you remember the transaction yourself?

Mr. CRAWFORD. Let him explain it.

A. Let me explain it.

Mr. CRAWFORD. Let him answer the question.

Q. Did you have a transaction yourself? That is what I want to know—yourself first?—A. Did I have the transaction?

Q. With Dean.—A. Yes; I sold him the oil myself.

8126 Q. Personally?—A. Personally.

Q. And you gave him the rebate checks, did you?—A. No: I didn't give him any rebate.

Q. Well, you gave him checks, didn't you?—A. I don't remember that I gave him a check. Possibly I did. But it was done in this way: We sold him a certain number of gallons—I think it was 3,000 gallons—of oil at a certain price. He was to pay the tank-wagon driver our regular prevailing price. See?

Q. Yes; I see.—A. And the difference between the contract and prevailing price I paid back to him during the time that he had those 3,000 gallons. If the price had gone the other way, Dean would have paid me.

Q. Didn't you pay him at the same time a rebate back on the oil that he had previously purchased of you?—A. That he had previously purchased?

Q. Yes, sir.—A. I don't remember about that.

Q. Did you sell that oil to Dean for less than the contract price?—A. Less than the contract price?

Q. Less than the market price.—A. I sold it to him, I think, less than the prevailing tank-wagon price.

Q. Yes; but your drivers collected of him the prevailing price?—A. That is it; yes, sir.

Q. Why did you carry on the transaction in that way?—A. Then I paid him back between the prevailing price and our contract price.

Q. I know; but why didn't you have your driver simply collect the price that you sold him the oil for rather than to collect
8127 the prevailing market price and afterwards pay him back the difference?—A. Because I thought that was the better way. I didn't want the driver to know.

Q. You didn't want the driver to know it; that is the question.—A. I didn't care whether he knew it or not. I thought that was the better way to do it, as I sold him that at contract price.

Q. Didn't you on August 25, 1904, pay Mr. Dean back $7.40?—A. I presume I did.

Q. Didn't you on November 10 of the same year pay him back $8.70?—A. I couldn't tell you without I saw the record or the check-book or cashbook.

Q. Did you draw the checks?—A. I don't know whether it was paid in checks or cash. I couldn't tell you. I couldn't tell you now at this late day.

Q. Didn't you, on December 23, pay him back $9.52?—A. I don't know. I presume I did.

Q. And didn't you sell him that oil for ¾ cent a gallon less than the market price?—A. Yes, sir.

Q. And you collected of him the full market price, or your driver did?—A. Yes, sir.

Q. And you paid him back the difference?—A. Yes, sir.

Q. In your settlement?—A. Yes, sir; between that and the contract price. If the price had gone the other way Mr. Dean said he expected to pay me back.

Q. You didn't deliver this whole 3,000 barrels at once, did
8128 you?—A. I never sold him 3,000 barrels.

Q. 3,000 gallons.—A. No, sir.

Q. You delivered it to him along as he needed the oil?—A. Along as he needed the oil.

Q. The same as you had been delivering it to him before?—A. Yes, sir.

Q. Now, how did it happen that you made this particular deal? I understood you to say that you had nothing to do with the actual sale of oil to the customer.—A. I didn't say anything of the kind. I said that I made it personally with him.

Q. Well, was that the only deal you made with anybody?—A. The only deal I remember of now.

Q. You were not in the habit of going out yourself and selling oil to the dealer, were you?—A. No, sir.

Q. You had men who did that?—A. Yes, sir.

Q. Why did you make this particular contract yourself?—A. Because he told me that Hisgen offered him oil or he had bought oil of him at a lower price. In order to meet that price I made him a contract for a certain number of gallons ¾ of a cent less than our tank-wagon price. That is the whole of it.

Q. And you agreed to deliver that to him along as he would need it?—A. Certainly. He hadn't storage enough to take 3,000 gallons at one time.

Q. Now, didn't you have just such a contract as that with Mr. Bowen?—A. No, sir.

Q. Mr. Dean's competitor.—A. No, sir. Sold Mr. Bowen
8129 a carload in barrels.

Q. Weren't you selling him oil for less than you were selling it to Mr. Dean?—A. Because he took a carload of oil in barrels, I sold him at the carload price, which was less than our tank-wagon price.

Q. Were you selling all the while to Bowen in carload lots?—A. Most generally he bought in carload lots in barrels.

Q. And he had a tank to hold it, did he?—A. No, sir.

Q. What did you do with it?—A. He drew it out of the barrels.

Q. So you delivered it to him in barrels?—A. Shipped him a carload.

Q. In barrels?—A. In barrels.

Q. And delivered it in barrels?—A. We delivered it to the railroad, at the depot. He did his own hauling.

Q. Wasn't the fact that you were selling to Bowen for less than you were selling to Dean the reason that you made the other contract with Dean? Didn't he complain to you?—A. That was one reason; yes.

Q. He complained to you that you were discriminating between him and his competitors, didn't he?—A. No; he told me that his competitor was offering oil less than he was because he bought it for less. And he also told me that Mr. Hisgen told him so.

Q. I think that is true. Hisgen notified him of the conditions?—A. Yes; Hisgen notified him.

8130 Q. And that he didn't know it before. You not only sold him that 3,000 gallons, but you paid him back ¾ of a cent on all the oil he had bought before during that same year, didn't you?—A. I don't know; I don't remember.

Q. What's the matter with your memory on that? That was part of that same transaction.—A. No; it ain't, either.

Q. Wasn't it?—A. I don't know how long it took him to use that 3,000 gallons. Probably it took him nearly a year.

Q. I am not talking about that at all, sir. Didn't you pay him back, for 8 or 10 months, ¾ of a cent on every gallon of oil that he had purchased from you?—A. During this contract?

Q. Before the contract.—A. I don't remember.

Q. You have frequently made that kind of contracts, haven't you?—A. No, sir; not very frequently. I have done it in order to

hold our trade where the competitor cut under us. Was obliged to do it in order to hold the trade.

Q. And in every instance where you have made that class of contracts your driver has collected the prevailing market price of oil from the customer?—A. Yes.

Q. And you have settled secretly with the customer afterwards?—A. Settled what?

Q. Secretly with the customer afterwards.—A. I don't know as I settled secretly at all; no.

Q. Well, you settled without the knowledge of your driver, didn't you?—A. Oh, well! [laughing] I don't know as we settled without the knowledge of the driver.

Q. What reason had you for keeping the real transaction
8131 from your driver?—A. Why, it was none of his business.

Q. That was the only reason, was it?—A. Yes.

Q. Before you had any talk with Mr. Dean as to the situation there, Mr. Akin had a talk with him, hadn't he?—A. I don't know.

Q. Well, didn't Mr. Dean tell you so?—A. No; not that I remember of.

Q. Didn't Mr. Akin tell you so?—A. Not that I remember.

Q. Well, Mr. Akin hadn't any authority, had he, to make that kind of an arrangement?—A. No, sir.

Q. You were the only man in authority. Then, you don't know but what Dean and Akin talked it over before Dean talked it over with you?—A. I don't know anything about it.

Q. How much did Dean's tank wagon hold?—A. I don't know. I never saw it.

Q. 300 gallons?—A. I never saw it. I don't know.

Q. Was Mr. Dean a pretty large dealer?—A. Not very large.

Q. He kept a small store there, didn't he?—A. No; he kept a large general store. I don't know what his output was in oil.

Q. Did you keep Dean's trade after he used up the 3,000 gallons that you first sold him?—A. No; I think Hisgens got the trade. Hisgens have got it now.

Q. At the present time is your price higher or lower than the Hisgens at Springfield?—A. I understand, the same price. Our price is 8½ cents.

8132 Q. Don't you know that Mr. Dean and their customers are paying 9 cents?—A. Paying who 9 cents?

Q. The Hisgens.—A. I don't know anything about it.

(A recess was here taken until 2 o'clock p. m.)

8133 JOHN J. COWLIN, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Mr. Cowling, where do you live?—A. Pittsfield, Massachusetts.

Q. What is your business?—A. Working for the Standard Oil Company as salesman.

Q. How long have you worked for the Standard Oil Company?—A. Five years last November.

Q. And in what capacity do you serve them?—A. Driving a tank wagon.

Q. You drive a tank wagon in Pittsfield?—A. Yes, sir.

Q. Do you know a man named Archie Couch?—A. Yes, sir.

Q. Where does he live?—A. I don't know where he lives. He clerks in Mr. Root's store.

Q. In Pittsfield?—A. Yes.

Q. What kind of a store does Mr. Root keep?—A. Grocery store.

Q. Mr. Couch went on the stand in this case (page 1968 of the printed record) and testified to a conversation with you, in which (according to him) he was standing at the door of Mr. Root's store and you drove along and said to him, "Can I fill your tank to-day?"

He replied, "No." You asked him if he would let you fill the
8134 tank, and he told you no, that you couldn't fill it, and that he told you the best place for it was to run it down the gutter. Did you have that conversation with Mr. Couch at any time?—A. No, sir.

Q. Did you ever say to Mr. Couch the words which I quoted you as having been said by you?—A. No, sir.

Q. He said further that you said to him that you would fill it free of charge and that it would not cost a cent to fill it (that is, his tank). Did you say that to him?—A. No, sir.

Q. Anything like that?—A. No, sir.

Q. Did you ever offer to fill his tank free of charge?—A. No, sir.

Q. With oil?—A. No, sir.

Q. Did you ever tell him at any time or any place that you would give him oil and that it wouldn't cost him a cent?—A. No, sir.

Q. Nothing of the sort ever happened?—A. No, sir.

Cross-examination by Mr. MORRISON:

Q. You know Couch, don't you?—A. Yes, sir.

Q. And he works for Root?—A. Yes, sir.

Q. He is the head man there, isn't he, in Root's store?—A. I don't know, sir.

Q. How long have you known him?—A. Why, I don't know; I suppose since I have been working for the Standard Oil Company; I never met him before.

Q. What is that?—A. About five years, I should imagine;
8135 since I have been working for the company.

Q. You have sold him oil, haven't you?—A. Yes, sir.

Q. Selling him now?—A. No, sir.

Q. When did you quit?—A. Why did I quit?

Q. When did you quit?—A. Oh, I couldn't say. I should say two years ago, perhaps, or more; I couldn't say.

Q. You haven't sold Root any oil for the last two years?—A. I don't think so. I think it is two years. I wouldn't say for certain.

Q. Who is supplying him with oil now?—A. I don't know. I understand Mr. Hisgen. I don't know.

Q. Hisgens are the only competitors that you have there, are they?—A. Yes, sir; I understand so.

Q. Well, didn't you try to get Root's trade back after you lost it?—A. No, sir.

Q. Never went near him?—A. No, sir.

Q. Didn't care whether you had it or not?—A. No, sir. I wasn't told and I didn't go.

Q. Well, without being told it is your duty, isn't it, to get all the trade you can?—A. Yes, sir.

Q. You are the man that gets the trade, aren't you, on your route?—A. Yes, sir.

Q. Nobody else goes and works up the trade but you?—A. No, sir.

Q. Do you let a customer go and not say a word to him, not try to get his trade back?—A. When they tell me they don't want me to call any more I don't.

8136 Q. Then you did have a conversation there in which he told you——A. Mr. Root told me before that.

Q. Mr. Root or Mr. Couch?—A. Mr. Root told me he didn't want me to call there any more.

Q. You say "before that." Before what do you mean? You say before that Root had told you not to call?—A. Before this——

Q. Conversation?—A. Yes. No, when the company came in there.

Q. When what?—A. When Mr. Hisgen came in. Mr. Root told me I needn't bother stopping there any more.

Q. As soon as they started?—A. Yes. He said they were going to buy from Mr. Hisgen.

Q. Two years ago?—A. I don't remember when they started—two years ago this fall or last fall.

Q. You never sold them any oil after the Hisgens went there?—A. No, sir.

Q. They have had their trade all the time?—A. Yes, sir.

Q. You have never made any effort to sell them any oil?—A. No, sir; I haven't been in the store since.

Q. Have you made any effort to sell any of Hisgens' other customers oil?—A. No.

Q. As soon as they get a customer you drop him; don't go back there any more?—A. When they tell me they don't want me to stop any more, I don't; yes, sir.

8137 P. M. WATT, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Mr. Watt, where do you live?—A. Providence, Rhode Island.

Q. You are employed by the Standard Oil Company of New York, are you not?—A. I am; yes, sir.

Q. And in what capacity?—A. I am general manager for part of the Eastern States; for Connecticut——

Q. Of what department?—A. Providence department.

Q. What is called the Providence department?—A. Yes.

Q. Just state what the Providence department includes.—A. I told you Connecticut; Rhode Island, the western part of Massachusetts, and part of Vermont.

Q. Speak as loud as you can. Mr. Watt has been ill, and his voice has been affected by it. Do just as well as you can. Now, Mr. Watt, you know Mr. Tuthill, of course?—A. I do, yes.

Q. He is one of your assistants, isn't he?—A. He is one of my assistants, yes.

Q. He is under you?—A. He is under me at Springfield.

Q. Do you know Mr. Henry Hisgen?—A. I met him only once, until to-day.

Q. Do you recollect being present at a meeting at which Henry Hisgen and George Tuthill and yourself were present in Springfield?—A. I do.

Q. Where was that interview?—A. That interview was in
8138 Mr Tuthill's rooms or residence in Court Square building.

Q. Do you remember when it was?—A. It seems to me it was in 1903.

Q. Now state what took place at that time.—A. Mr. Tuthill had written me that they were willing to sell out, were anxious to sell out——

Q. Who were willing to sell out?—A. Hisgen Bros. And gave me a memorandum of what they had in the way of plant, etc. We met there for the purpose of discussing that deal. I asked Mr. Hisgen about the plant. He told me from memory, I suppose, and it agreed with just about what Mr. Tuthill had told me the plant consisted of. I inquired of the price, and told him it was too high.

Q. What price did he name?—A. He named $7,000.

Q. What did you say then?—A. He told me that if we would do it and had it he would be out of the way and they would not sell any refined oil in the Eastern States, and also that it wasn't a high price at all, because we could get a higher price in all these towns he was going into.

Q. Do you recollect anything else he said?—A. Nothing more than he wanted to keep the oil cans and office furniture. And I declined.

Q. Did he say about what he would do if you did not accept the offer?—A. He said he was going into the oil business in Hartford and Pittsfield and Worcester. My recollection is he said
8139 Worcester, but I couldn't be certain of it. He mentioned several places around.

Q. When Mr. Thomas L. Hisgen was on the stand he testified in regard to certain transactions between the Standard Oil Company and the American Writing Paper Company at Windsor Locks. Where is Windsor Locks?—A. It is about 17 or 18 miles below Springfield.

Q. On which side of the river?—A. It is on the east side of the river.

Q. Now, Mr. Hisgen testified, in substance, that you charged the American Writing Paper Company 9 cents while you were selling to dealers at 7½ cents, and that the paper company quit the Standard for that reason. Will you please explain what the facts were?—A. Our mode with the paper company is, they send us an order, and that order is to take the price of the place and time of delivery. I think the time they talked about there they placed an order for 2,000 gallons at Windsor Locks.

Q. When was that, do you know?—A. I think sometime in 1904, at 9 cents. The price went up ½ cent, to 9½. Our man made the delivery and charged them 9 cents, which was the first delivery. We wrote our man that the American Writing Paper Company——

Mr. Morrison. That is objected to as hearsay.

Witness. That the American Writing Paper Company's price was 9½. That was an advance of half a cent from the first delivery. He took the order to mean that was the price during the continuance of that order, the 2,000-gallon order.

8140 Mr. Morrison. That is objected to, because he is stating a conclusion.

Q. Just state what he did.—A. During the continuance of that order he charged them 9½ cents.

Q. That is, he continued to charge 9½ cents during the delivery of the 2,000 gallons?—A. The 2,000 gallons; yes.

Q. Now, in the meantime what had happened to the price?—A. The price had gone down to 7½.

Q. Whereas he was charging them 9½ cents?—A. Yes.

Q. When you found it out, what did you do?—A. We wrote him and told him the circumstances.

Q. Wrote whom?—A. The purchasing agent.

Q. The purchasing agent of the American Writing Paper Company?—A. Of the American Writing Paper Company; yes, sir; giving the circumstances of it, and refunded the difference.

Q. And did you subsequently send anyone to see him?—A. We sent a man up there to explain it to them. We wrote the purchasing agent first, and he didn't seem to take it kindly, or didn't understand it. We sent a man up there to see him, and he came back all right.

Q. Were they satisfied, then, with the explanation?—A. So far as I know; yes.

Q. Did they continue to buy of you after that?—A. Yes, sir.

Q. Do they buy of you to-day?—A. They buy some, but I was told by the agent up here lately, within two weeks, that they had bought some from other parties, and said they would divide the trade.

8141 Q. After you made that explanation did they then continue for a considerable time to buy from you?—A. Yes, sir; from that explanation up until about two weeks ago.

Q. It appears from the exhibits in this case that in the late summer of 1904 the price of the Standard Oil Company at Hartford for

water white oil was reduced from 9 cents to 8 cents. Do you recollect that transaction?—A. I do.

Q. Will you explain why that reduction was made?—A. The Valvolene Oil Company was in there and it cut the price to that. We met that price to hold our trade.

Q. You say that the Valvolene Oil Company was in there. You mean they were selling——A. They were selling at 8 cents.

Q. Water white oil?—A. Water white oil.

Q. And they cut their price to 8 cents?—A. To 8 cents.

Q. And you made the reduction to meet their cut?—A. To meet their prices; yes.

Q. That is what you mean to say?—A. Yes.

Q. Now, also at Hartford, in March, 1905, there appears to have been a cut from 9 cents to 8¼ cents, which continued for several months. Do you remember that?—A. I don't remember that particular one. It was either to meet a reduction made by the Valvolene Company or it was a general decline over the territory.

8142 Q. What do you mean by general decline?—A. We very often have orders, for trade reasons, to decline the price over the entire territory.

Q. That is, you mean to say that at that same time there was a general reduction through your territory?—A. A general reduction through the territory—all through.

Q. In the same place, Hartford, in 1906, the latter part of the year, there appears to have been a reduction from 9½ to 8½ cents.—A. What year was that?

Q. The latter part of 1906. Was that also a general decline?—A. That was also a general decline; the market declined; yes, sir.

Q. Worcester is in your territory, isn't it?—A. It is, yes.

Q. In Worcester, the latter part of 1903, there appears to have been a reduction from 10¼ cents to 8¼ cents and then to 7½ cents, which lasted for two or three months. Have you any recollection about that, the reason for it?—A. I have. The Leonard & Ellis branch of the Valvolene Oil Company, as we understand it, was there, selling, and made cuts, keeping about ¾ of a cent a gallon lower than us. We followed these cuts shortly after they were made, in every case. I remember sending a man up there about August of that year, and he telephoned, after investigation, that they were selling at 7½ cents, and I told him to meet it.

Q. Those reductions that I have called your attention to were made, were they, in consequence of information that you re-

8143 ceived that Leonard & Ellis had previously cut their prices?—A. Cut their prices, yes.

Q. And you cut your prices down?—A. Yes. They were selling in barrels and we were selling in tank wagons.

Q. In the latter part of 1904 there was a reduction apparently from 9 cents to 8 cents, which continued for 5 or 6 months, and then a further reduction to 7½ cents through 1905, which continued for some six months. At Worcester I am talking about. Does that same

explanation apply there?—A. The same explanation, yes. For some reason they seem to have dropped out.

Q. Dropped out what?—A. Dropped out—not making sales, not forcing sales. I have heard (it may not be so) that they were short of oil and didn't care about whether they sold or not.

Q. Well, the point is, at the times you made these reductions they had returned to the market and were cutting your price?—A. Yes, and were cutting our price.

Cross-examination by Mr. MORRISON:

Q. How did you ascertain at what price the Valvolene Oil Company was selling its oil in Worcester?—A. I read it from my agent out there, Mr. Horsefall.

Q. You got a report to that effect?—A. Yes, and I verified it by sending a clerk from the office, or, rather, an assistant from the office to go and see the customers, and he brought back verification from Worcester.

Q. How many customers did the Valvolene people get in
8144 Worcester?—A. That I couldn't say.

Q. Did they get any?—A. Lots of them.

Q. Did they get so that they did half the business?—A. I couldn't say that.

Q. A quarter of it?—A. I couldn't say that, either.

Q. The record shows that all of your competition there was only 2.9 per cent in 1905, taking the whole year together?

Mr. CRAWFORD. What are you talking about now?

Mr. MORRISON. I am talking about Worcester.

A. The record is wrong.

Q. What is that?—A. I believe the record is wrong, because they had more than that.

Q. Well, this record is furnished by the Standard Oil Company.

Mr. CRAWFORD. Oh, you know perfectly well we don't admit that is all the competition.

Q. You got a complete report of the competition out there at Worcester, didn't you?—A. No, sir.

Q. Did you send a man out there for that purpose?—A. No, sir; not for that purpose. We sent him out to see the customers, mostly.

Q. Yes, and to find out whom he was selling to.—A. As far as we could; yes.

Q. He made a report to you?—A. Not on gallons at all.

Q. Just on customers?—A. Just on customers.

Q. You got reports from your drivers there, didn't you?—A. Yes, but we never put them down, never made a record of them.

8145 Q. Well, you reported to somebody, didn't you, what the competition was in Worcester?—A. No; no, I didn't.

Q. How does the Standard Oil Company get the competition in Worcester if they didn't get it from you?—A. I reported some things.

Q. You reported all you knew about it, didn't you?—A. No; not exactly all I knew about it.

Q. You don't know whether you knew all about it or not?—A. No.

Q. You gave them the best information you could obtain?—A. Gave them the best information I could obtain.

Q. As to competition?—A. Yes.

Q. Now, in the year 1904 it is apparent there was only 5 per cent competition there in Worcester.—A. Well, that is guesswork more than anything.

Q. When you cut the price in Worcester did you cut it in the other towns around there?—A. The other towns supplied from Worcester?

Q. Yes; you cut it in all the towns supplied from Worcester?—A. From Worcester; yes.

Q. Now, what were those towns?—A. Northbridge, Oxford, Jamestown, or Jamesville, I am not sure which.

Q. Were the Valvolene people in Northbridge and the other towns you have spoken of that are tributary to Worcester? Did they go into those towns?—A. Sometimes.

Q. They did sell some oils in those towns?—A. Yes.

8146 Q. You lowered the price in those particular towns?—A. In those particular towns, yes; so as to give the parties in those towns the same price as Worcester.

Q. Did you have any other competition than the Valvolene people in Worcester?—A. Always.

Q. Who else is there?—A. There is Jerome Marvel & Company. They only sell a little.

Q. What?—A. They don't sell much.

Q. Who else was competing with you in Worcester besides the Valvolene people?—A. I can't mention any more just now.

Q. Were the Hisgens?—A. No; I don't think they were. Oh, occasionally we did have from E. A. Buck & Company.

Q. Are the Valvolene people in that territory now?—A. They are not, as far as I know.

Q. When did they leave the territory?—A. That I can't tell. There is another party there, E. A. Buck & Company.

Q. How long did you go during the years 1904 and 1905 on your price in Worcester?—My recollection is 7½.

Q. How low did the Valvolene people go?—A. I think 7½.

Q. Well, didn't you go below that?—A. No, sir.

Q. In no instance went down below?—A. Not that I remember.

Q. Kept their price?—A. Kept their price when they got so low.

Q. Could you get your customers back by selling at the same price?—A. In some cases; yes.

8147 Q. You finally got them in all cases, didn't you?—A. No; some parties never came back.

Q. I thought you said the Valvolene people left there?—A. There is another competitor there now.

Q. Somebody else supplied them after that?—A. Yes, sir.

Q. Your testimony now is that you didn't, during the years 1904 or 1905, get below the Valvolene people?—A. No. That is the best of my recollection; yes.

Q. Have you any record that will show just what the Valvolene people were selling for?—A. No; I have not.

Q. How long did they do business in Worcester?—A. In refined oil?

Q. Yes. You are talking about refined oil altogether, aren't you?—A. Yes. I don't know but they are doing it to-day, some. They have a few customers in barrel oil.

Q. If they were you would know about it, wouldn't you?—A. No; not of necessity.

Q. You don't know whether they are or not.—A. No, I don't know whether they are or not. I know they are not in it in a large way. Whether they are entirely out again I don't know.

Q. They have no tank wagons on the street, have they?—A. No.

Q. For how long did they have tank wagons on the street?—A. In Worcester?

Q. Yes.—A. Never to my knowledge.

Q. How did they sell?—A. They sold in barrels.

8148 Q. You were delivering your customers from tank wagon?—A. From tank wagon; yes, sir.

Q. You have got to sell oil in barrels for a lower price, haven't you, than the person who sells it in the tank wagon?—A. No; not always.

Q. How is that?—A. Not always; not of necessity.

Q. Dealers won't bother with barrel oil if they can get it in tanks?—A. Not all; some of them will.

Q. In a town like Worcester will they?—A. Yes, sir.

Q. You think they will?—A. Yes.

Q. How large a place is it?—A. Worcester?

Q. Yes.—A. The last I heard of it was about 130,000.

Q. And they will pay just as much there for oil in barrels as they will where it is delivered in tank wagons?—A. No; I don't think they will, only in a few cases.

Q. In a very few cases?—A. Yes.

Q. You were making your deliveries entirely from tank wagons in Worcester, weren't you?—A. No.

Q. You were selling some in barrels?—A. We were selling some in barrels.

Q. Very little, wasn't it?—A. Very little.

Q. The Valvolene people sold in barrels exclusively, didn't they?—A. They sold in barrels exclusively, at a delivered price, put in the customer's store. They had tank wagons and took the barrels around and pumped it in the tanks of the customers.

8149 Q. Then, they did have tank wagons there?—A. No; they didn't have tank wagons, they had barreled oil. Carry a barrel to the store and pump it out.

Q. And put it into the tank?—A. And put it into the tank.

Q. They did that as a business, did they, with all the customers?—A. I can't say with all; with some customers.

Q. Do you know whether they did or not?—A. Yes. I can't tell the cases now.

Q. How do you know that?—A. Only by hearsay. I wasn't there; I didn't see them.

Q. You weren't there and don't know anything about it?—A. No. But customers told us that they were pumping it into their tanks.

Mr. MORRISON. Well, that is objected to.

Q. Now, about this American Paper proposition. This company was dissatisfied with the price that you charged them, wasn't it?—A. Yes.

Q. And they bought some oil of the Hisgens?—A. I don't know whether they did or not. I don't think they did at this time.

Q. Well, you knew they bought it from somebody?—A. They continued buying from us all the time, and have continued.

Q. Well, they bought some oil from the Hisgens, didn't they?—A. Probably they did; I don't know.

Q. And you learned that they were complaining about the price that you had charged them?—A. Certainly. They wrote us a letter calling our attention to it.

8150 Q. And you sent a man over there?—A. First we wrote them explaining how it was.

Q. And this man paid them back, didn't he, what they claimed was an overcharge?—A. No.

Q. How is that?—A. No; the man didn't pay them back.

Q. Who did pay it back?—A. We gave it a refund from the Providence office, I believe.

Q. How is that?—A. We refunded them from the Providence office.

Q. You refunded them what they claimed?—A. Yes; what belonged to them, according to the agreement, according to our prices.

Q. Well, isn't it true that you didn't sell them a bit of oil for a year and a half after that?—A. No, sir.

Q. How much oil did you sell them after that for the next year and a half?—A. As far as I know we sold them pretty nearly all. There has been no time when there has been a year and a half without their buying oil, to my knowledge.

Q. Has there been a year?—A. No.

Q. Half a year?—A. I don't think so.

Q. Your books will show, won't they?—A. Our books will show, yes.

Q. Now, I am talking about the time immediately following the adjustment of this overcharge, as they claim.—A. Yes.

Q. Did you have them as customers for six months after that?—A. It is my impression we did, yes; had them right straight along.

8151 Q. You don't think, then, that the Hisgens had them during that period?—A. Not exclusively. They may have sold them a lot or two.

Q. What kind of oil were they using?—A. Water White oil.

Q. It was burning oil?—A. Burning oil, but I think they used the most of it for putting in the vats to put down the foam. I understand they use considerable for that purpose.

Q. What was the price that they complained of—9½?—A. When they sent us the order for 2,000 gallons——

Q. No; you have told us about that. What was the price?—A. 9½ as charged.

Q. How much did you pay them back?—A. I can't tell now. Some of it was paid back at half a cent and some at a cent a gallon, as the price highered or lowered.

Q. Up to that time, when you commenced to pay back, had they bought oil of anybody else?—A. Not to my knowledge.

Q You don't know whether they did or not?—A. No; I do not.

Q. What caused them to make this complaint? How did they find out that the oil was too high?—A. That I don't know.

Q. You don't know?—A. No; I don't know.

Q. Didn't they tell you that the Hisgens had notified them that you were overcharging them?—A. Not to my knowledge.

Q. You mean that you don't remember about that?—A. I don't remember about it. I remember of seeing the letters, and I
8152 don't think that the Paper Company mentioned Hisgen Bros. at all in their letters.

Q. Did you immediately after you made that adjustment sell them oil?—A. We did.

Q. How much did you charge them?—A. We charged them the market price at the time.

Q. What was it?—A. I don't know what it was at that time.

Q. Was it 7 cents, or 8 cents, or what?—A. It was either one of the two, I think.

Q. One of the two?—A. One of the two, because that has been the price at Windsor ever since.

Q. You don't know which it was?—A. No.

Q. Is that the same price that you are selling to the rest of the customers in that same town?—A. It is, yes.

Q. What are you selling oil for in Hartford to-day?—A. 8½ cents to the best of my knowledge.

Q. What are you selling for at Windsor Locks?—A. 8½ cents.

Q. Selling it for exactly the same, are you, in the two places?—A. Yes, sir; to the best of my knowledge.

Q. How is that?—A. That is the way that I remember it.

Q. Well, I mean right now.—A. Now, yes.

Q. Well, don't you know what the price is now?—A. That is the price, to the best of my knowledge, but I have got over a hundred places, and I can't recollect everything. To the best of my knowledge, it is 8½ cents to-day.

Q. Isn't it 9 cents in Hartford and 8½ in Windsor Locks to-day?—A. Not to my knowledge, no.

8153 Q. What is it?—A. No, I don't——

Q. You don't what?—A. I don't know that. Let's see. I remember it is 9 cents in Hartford.

Q. And it is 8½ cents in Windsor Locks?—A. In Windsor Locks, yes.

Q. How do you account for that difference?—A. How do I account for it?

Q. Yes.—A. It costs more to do business there.

Q. Well, you said a little while ago the price was the same.—A. I certainly did. I amend my answer.

Q. Now, it costs more to do business in Windsor Locks?—A. In Windsor Locks.

Q. Why?—A. Because you have got a larger expanse of territory. In Hartford there is a big lot sold in a small circumference. In Windsor Locks we go all over.

Q. It costs more to market it in Windsor Locks than it does in Hartford?—A. Yes, sir.

Q. Isn't it true you are selling it for 8½ in Windsor Locks and 9 in Hartford?—A. It is, yes.

Q. And yet it costs more to market it in Windsor Locks than it does in Hartford?—A. Yes, sir.

Q. And that is the reason you charge less?—A. No, I will amend that. We have a certain competition that we are meeting at Windsor Locks.

Q. Oh, yes. That is the idea, exactly. Because there is competition there?—A. There is competition, and we do that to hold our trade.

8154 Q. About a year and a half ago did you drop the price in Windsor Locks down to 8 cents?—A. Probably we did. I couldn't tell you just now.

Q. What did you do that for?—A. If we did it at all it was on reports that——

Q. Reports of competition?—A. Competition. That other parties were making that price.

Q. Well, don't you know that at that time the Hisgens were selling for 8½ when you went down to 8?—A. I do not.

Q. Do you know that they were not?—A. Which—selling at 8½?

Q. At 8½.—A. No; I never know what they are selling for.

Q. You don't know what their selling price was?—A. No.

Q. You get pretty accurate reports, don't you, about what your competitors are selling for?—A. No; not always.

Q. Accurate enough so that you base your own prices on them?—A. The reports at that time were that they were selling at 8 cents if we lowered the price.

Q. Do you base your prices on what your competitors are doing?—A. Sometimes.

Q. Well, always, don't you?—A. Not always.

Q. That is the principal factor, isn't it?—A. The principal factor in large places; yes.

Q. And if necessary you go down below the cost of the product?—A. We never do, that I know of.

Q. You never do?—A. We haven't done it in the last five or six years.

8155 Q. Don't the records here show that you have been selling in your territory below cost in the last five years?—A. No; I don't make up those records.

Q. What is that?—A. I don't make up those records. I don't know.

Q. Haven't you been selling at a loss in Springfield practically all the time from 1902 to 1905, inclusive?—A. No; I don't know it.

Q. Don't know whether you have been selling at a loss or not?—A. No.

Q. Don't you keep any track of the question as to whether you are selling at a profit or a loss?—A. No.

Q. Don't know anything about that?—A. Don't care anything about that.

Q. Your idea is to keep the trade?—A. To keep the trade.

Q. Whether you lose or whether you don't?—A. We try to hold the trade against any prices made.

Q. Hold the trade at all hazards regardless of profit or loss?—A. Oh, no; we take some regard to that.

Q. Now, Springfield is under your control and jurisdiction, isn't it?—A. Yes.

Q. And you fix the prices, don't you?—A. No; not altogether.

Q. Who does?—A. Sometimes we have orders at Providence to lower or advance prices.

Q. Have you had any orders to lower or to advance prices in Springfield since 1902?—A. Yes, sir.

Q. When?—A. I couldn't say just when, now.

8156 Q. Did you have orders to lower or advance the prices during the years 1902, 1903, 1904, and 1905?—A. I looked up one; yes.

Q. How is that?—A. I know of one case just now.

Q. One case?—A. Yes.

Q. When was that?—A. That was the time we had the price at 7½ cents——

Q. And you got orders to advance it?—A. No; got orders to lower over the entire territory one-half cent.

Q. So you put it all down to 7?—A. No; I didn't say so.

Q. What did you lower it to?—A. I lowered it at Springfield to 7; our price was 7½.

Q. What did you lower it to 7 for in Springfield?—A. Because I was told to lower it ½ cent.

Q. And you didn't know any reason?—A. No.

Q. You had pretty fierce competition out there in Springfield, didn't you?—A. Yes; you might call it so.

Q. Well, didn't you lower it ½ cent everywhere over that territory at the same time?—A. We did.

Q. You were losing money in Worcester, were you not, for the last four months of the year 1904?—A. Not to my knowledge.

Q. Well, do you know whether you were or were not?—A. I do not.

By Mr. CRAWFORD:

Q. When you said that you reduced prices on account of competition, you mean that you reduced them when your competitors have reduced them?—A. Have reduced them; yes.

8157 Q. That is, you reduce your prices to meet their——A. To meet the cuts that are made by them.

Q. And if they force you down to a point below where the company makes money, you still go down and meet their price in order to hold the trade?—A. Yes.

Q. That is, you do sometimes?—A. I do sometimes, not always.

By Mr. MORRISON:

Q. Can you give me an instance when you didn't do it?—A. No; I couldn't just at the present time.

Q. There are not any such instances, are there?—A. There have been; yes, sir.

Q. If you know there have been, give us some.—A. I couldn't give any specific instance at the present time.

Q. You can't think of any case of that kind?—A. Not in these particular years we are thinking about.

Q. What is it?—A. Not in these particular years we are thinking about. I can't think of any just now.

(The hearing was then adjourned until September 1, 1908, at the office of the United States marshal, Chicago, Illinois.)

8158 ROOM 515, CUSTOM-HOUSE, NEW YORK CITY,
September 3, 1908—10.30 a. m.

By agreement of counsel, the hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place, instead of at Chicago on September 1, as per adjournment.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison, and Mr. J. Harwood Graves; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. F. L. Crawford, Mr. Douglas Campbell, and Mr. W. Cleveland Runyon.

WILLIAM M. PALMER, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. Your full name is William M. Palmer?—A. Yes, sir.

Q. Where do you live?—A. Newburgh, New York.

Q. How far is that from Albany?—A. I couldn't tell you; I don't know exactly how far it is from Albany.

Q. About how far?—A. It is about 80 miles, I should judge.

Q. Is Newburgh on the Hudson?—A. Yes, sir.

Q. And on the west side of the Hudson?—A. Yes, sir.

Q. How long have you lived there, Mr. Palmer?—A. About 23 years.

Q. How old a man are you?—A. 38.

8159 Q. What is your business?—A. Grocer.

Q. How long have you been in the grocery business?—A. 11 years.

Q. And where; at Newburgh?—A. At Newburgh; yes, sir.

Q. In business for yourself?—A. 11 years for myself; yes, sir.

Q. What is your firm style or name?—A. William M. Palmer.

Q. Do you buy and sell oil?—A. I do.

Q. For illuminating purposes?—A. Yes, sir.

Q. Have you been doing that ever since you have been in business?—A. Yes, sir.

Q. Do you know the firm of Hisgen Bros., of Albany?—A. I know of them; yes, sir.

Q. How large a town is Newburgh?—A. About 28,000.

Q. Do you have a merchants' association there, or did you ever have?—A. Yes, sir.

Q. And are you an officer of that association?—A. I was.

Q. What office?—A. Secretary.

Q. Secretary of the Retailers' Association of Newburgh?—A. Grocers' & Butchers' Association.

Q. When was that, Mr. Palmer?—A. I couldn't tell you exactly when it was formed; I think about 1901 or 1900; somewhere along there; I don't know exactly the date.

Q. Did you ever buy any oil from the Hisgen Bros.?—A. No, sir.

Q. Do you remember when Hisgen Bros. first came into the

8160 Newburgh market?—A. I knew when they came in. I don't know whether it was first or not.

Q. When was it that you first knew of their coming in there?—A. In 1902.

Q. 1902 or 1901?—A. 1902.

Q. At that time were you buying oil from the Standard?—A. I was.

Q. In what way?—A. Tank wagon.

Q. And do you remember the Standard prices at that time, at which you were purchasing?—A. Well, they varied.

Q. I mean when Hisgen Bros. first came in.—A. When I first knew of them, yes, sir; I could tell you the price at that time.

Q. Will you do so, please?—A. 8½ cents.

Q. Was the Standard price?—A. Was the Standard price, yes, sir.

Q. Were any offers made to you at that time by the Hisgen Bros.?—A. Yes.

Q. On their oil?—A. Yes, sir.

Q. At what price?—A. At a cent less.

Q. Do you know of an offer being made by the Hisgen Bros. to the association that I spoke of with respect to the sale of oil?—A. I can't say that they brought the offer in there. It was in the association,

yes, sir. There was an offer in there, but through a member of the association.

Q. Now, what was that?

8161 Mr. KELLOGG. I object to that unless you know that it came from the Hisgens.

Q. Please tell what it was.—A. Well, merely an offer to sell us the oil.

Q. State it fully, please, just what it was.—A. An offer to sell us oil for 7½ cents a gallon.

Q. An offer by whom?—A. I couldn't tell you by whom; it was brought in by a member of the association.

Q. Do I understand that the offer purported to come from Hisgen Bros.?—A. Yes, sir.

Q. To sell oil to the members of that association at what price?—A. 7½ cents.

Q. What was the Standard price at that time?—A. 8½ cents.

Q. So, the Hisgen Bros.' proposition was to sell oil to the members of your retailers' association for a cent less than the Standard price?—A. Yes.

Q. What became of that proposition?—A. It was turned down so far as the association was concerned.

Q. Why?—A. They couldn't get enough of the members to buy what they wanted them to buy.

Q. What reasons were advanced?—A. In the first place, we were not incorporated, and it had to be bought through some one man, and there was no man in the association who would take the responsibility of the order.

Q. How did the Standard at that time deliver its oil to the grocers and the trade at Newburgh, by tank wagon?—A. Yes, sir.

Q. You continued to buy from the Standard tank wagon yourself, did you?—A. I did.

8162 Q. Were there any threats of any kind made by any representative of the Standard to you?—A. Not to me; no, sir.

Q. Was there any special concession of any kind made by the Standard to you for the purpose of holding your trade?—A. No, sir.

Q. During any of the years from 1901 or 1902 down to the present time?—A. At no time.

Q. Are you pretty well acquainted with the grocery trade in Newburgh, of your competitors?—A. I think so.

Q. Do you meet with them frequently in this association of which you are secretary?—A. At that time we did; yes, sir.

Q. How long did that continue?—A. I couldn't say positively.

Q. A year or two?—A. A year, anyway.

Q. Did you receive any telegrams, or do you know of any of your neighbors in the business ever receiving any telegrams from the Standard with respect to purchases, or alleged purchases, made from Hisgen Bros.?—A. I never did, and I don't know of any that ever did.

Q. It has been charged—claimed by the Hisgens when they were on the stand—that when they first came into the city of Newburgh and sought to do business there, the Standard cut prices in order to hold their trade and take away the trade of the Hisgen Bros. Have you any recollection of the prices that prevailed in Newburgh in the years 1902 and 1903?—A. Well, in a general way. I looked over my cash account, and I found that during the summer months we were paying 8½ cents.

8163 Q. During the summer of 1902?—A. Yes, sir. In October they raised us a half a cent. That was 9 cents. In November we were raised another half a cent—9½—and it held that price for the balance of that year, as far as my books show.

Q. Do you remember what the prevailing price was the next year? Did it run from 10 to 11½ cents?—A. I couldn't tell you positively on that because I didn't refresh my recollection any further than that year.

Q. There wasn't any marked cut in prices during the year 1902, when the Hisgens came into that field; on the contrary, prices advanced?—A. That is the way it was.

Q. During all the years that you have been dealing with the Standard, has its tank-wagon service to you been entirely satisfactory?—A. Yes, sir; in every way.

Cross-examination by Mr. KELLOGG:

Q. The Hisgens never sold you any oil?—A. No, sir.

Q. Did they ever offer to sell you any oil?—A. They did; yes, sir.

Q. At that time?—A. I couldn't tell you just exactly the time; it was during the——

Q. You have no record of it in your office?—A. Not of the time; no, sir.

Q. And you depend upon your recollection entirely as to when it was? You have only a general recollection about it?—A. Of offering me oil?

8164 Q. Yes.—A. Yes, sir.

Q. What?—A. I have a recollection of them offering me; yes, sir.

Q. You have a recollection as to the time, I mean—definite recollection, have you?—A. Well, it was during that year, but what month or what day in the month I don't know.

Q. You don't know what time during that year?—A. No, sir.

Q. Do you know when the Hisgens started to sell oil in Albany?—A. I do not.

Q. When was this matter called to your attention first?—A. What matter?

Q. Oh, about coming here to testify.—A. When I was subpœnaed.

Q. When?—A. Last Friday or Saturday.

Q. Who talked with you about the Hisgens having offered you oil?—A. No one.

Q. No one?—A. Not at that time; no, sir.

Q. When did you first talk with anybody about the Hisgens having sold you oil?—A. I have not talked with anyone about it.

Q. Talked with no one about it?—A. No, sir.

Q. Until you went on the stand?—A. No, sir. That is, only just talked among the boys since I have been down here, that is all.

Q. What boys?—A. Some of the men that are here that I was associated with.

8165 Q. And they are the only persons that ever mentioned this to you?—A. Yes; in this respect, yes.

Q. Never talked with any of the attorneys here?—A. No, sir.

Q. Or anybody representing the Standard Oil?—A. No; I have not talked with anyone in regard to this matter.

Q. So you didn't know that you were going to be asked about the Hisgens offering you oil in 1902, until you went on the stand?—A. Only when I was subpœnaed, of course.

Q. Well, who told you about it?—A. When I was subpœnaed?

Q. Yes.—A. Why, the man that gave me the subpœna.

Q. Who gave it to you?—A. I couldn't tell you.

Q. What did he tell you?—A. He told me that I was to testify in this case.

Q. What about?—A. About the United States against the Standard Oil Company.

Q. Did he tell you what subject you were going to be asked about?—A. I don't think he did; I don't remember.

Q. So you never knew that you were going to be asked about the Hisgens offering any oil until you went on the stand?—A. Oh, yes.

Q. Well, who told you?—A. I couldn't tell you.

Q. You don't know who told you?—A. No; I don't remember.

Q. What?—A. I don't remember who told me.

8166 Q. Well, who asked you about it?—A. Who asked me about what?

Q. About your testimony here.—A. There wasn't anybody asked me about my testimony.

Q. Nobody asked you whether Hisgens sold you oil, or offered to sell you oil?—A. Not before—well, yesterday I was asked.

Q. Who asked you?—A. Why, some gentleman of the Standard Oil Company.

Q. That is what I asked you. Now, is that the first time that the matter had been mentioned to you?—A. I don't remember of any other time; no, sir.

Q. Were you in New York then?—A. I was.

Q. The only way you have of fixing the time is from your general recollection?—A. Yes, sir.

Q. How do you know about the prices, then, in 1902? Can you recollect them without any refreshing of your memory from books?—A. Why, I looked them over.

Q. When did you look them over?—A. Yesterday.

Q. In Newburgh?—A. Yes, sir.

Q. Before you came down here?—A. Yes, sir.

Q. Who told you to do that?—A. No one did.

Q. How did you know you were going to be asked about that?—A. I didn't know what I was going to be asked.

Q. You didn't know what you were going to be asked?—A. No, sir.

Q. But you went and looked them over and just guess at
8167 it?—A. Yes, sir.

Q. What time in the year did you have this price of 8½ cents?—A. I couldn't tell you just what date; it was during the summer months.

Q. What was the price in 1900?—A. I couldn't tell you.

Q. What was the price in 1901?—A. I couldn't tell you; I didn't look.

Q. You didn't look?—A. No, sir.

Q. Don't you have a general recollection about that?—A. No, sir.

Q. Have no recollection whatever?—A. No, sir.

Q. Wasn't it 10, 11, and 12 cents, along there?—A. I don't think so; I couldn't tell you exactly.

Q. You don't know?—A. No, sir.

Q. Now, do you know that the Hisgens never sold any oil in Newburgh until the summer of 1902?—A. I do not.

Q. You don't know anything about it?—A. No, sir.

Q. You don't know what time they started their business in Albany?—A. I do not.

Q. Was the price of oil reduced to you in the summer of 1902, from the Standard Oil Company?—A. I don't think so.

Q. Were you shown yesterday a sheet showing the prices?—A. Of oil?

Q. Yes.—A. No, sir.

Q. Were you in the Standard Oil building when you talked this over?—A. I was.

Q. Didn't they have a sheet there showing the prices of oil
8168 every year?—A. If they did they didn't show it to me.

Q. Now, what price did the Hisgens offer you oil for?—A. 7½ cents.

Q. You were then paying 8½?—A. Yes, sir.

Q. Do you know what the price was then in Albany?—A. I do not.

Q. Was the price afterwards reduced or raised?—A. By the Standard, you mean?

Q. Yes.—A. Raised.

Q. It never was below 8½ cents in Newburgh?—A. I couldn't tell you that.

Q. Do you know whether it was or not?—A. I do not.

Q. You don't know when the Hisgens first commenced to sell oil in Newburgh, do you?—A. I do not.

Q. You don't know whether or not other merchants were getting oil at 7½ cents when they made you that offer, do you?—A. I don't know what they were paying. They were buying oils from them.

Q. You don't know what the other merchants were paying?—A. No, sir; I have no way of telling.

Q. You always bought of the Standard Oil Company?—A. Always.

Q. Is anyone else selling oil in Newburgh but the Standard Oil Company?—A. Not that I know of.

Q. Has there been for many years?—A. I don't know of any.

Q. Have Hisgens ever had a station there?—A. Not that I know of.

Q. Are they selling any oil there now?—A. I don't know.

8169 Q. Have they sold any there at any time?—A. Yes.

Q. Since 1902?—A. I don't know.

Q. Now, as a matter of fact, do you know that when the Hisgens first went to Newburgh oil was not selling for 10 or 11 cents a gallon?—A. When they first came? I don't know.

Q. Yes.—A. I don't know when they first came there.

Q. That is what I thought.

Redirect examination by Mr. ROSENTHAL:

Q. You refreshed your recollection as to prices in 1902?—A. Yes, sir.

Q. Could you, by referring to your books, determine your 1901 prices?—A. I could, I suppose.

Q. Mr. Hisgen himself has testified they first came to Newburgh in 1901 and 1902.

Mr. KELLOGG. Whereabouts is that? Have you the page, Mr. Campbell?

Q. The Standard Oil records show that the 1901 prices, Newburgh, for the first nine months were 8½ cents, for the next three months 9 cents. Does that refresh your recollection in any way?—A. No; I couldn't tell; I wouldn't say, because it is a long while ago.

Q. What is the prevailing price now?—A. 9½.

Q. And has been for how long?—A. I think a year or more.

Q. Since 1902 it has never been below 8 cents, has it?—A. I don't think I ever bought it below 8 cents.

8170 Q. Who is the Standard Oil salesman in Newburgh that calls on you?—A. You mean for oil?

Q. Yes, sir.—A. They don't have any.

Q. Well, who delivers in tank wagon to you?—A. A man by the name of Mills.

Q. I suppose he talked with you about coming down here and testifying, did he not, some time ago?—A. He never said anything to me about it.

Q. Who did first talk to you about coming down here?—A. To come and testify?

Q. Yes, sir.—A. A gentleman came and served me with a subpœna; that is the first I knew I had to testify.

Q. Do you remember Mr. Mills or anyone else talking with you about any of these facts concerning which you have testified?—A. I don't remember.

Q. You haven't any recollection of that?—A. No, sir.

Recross-examination by Mr. KELLOGG:

Q. Referring to this sheet that Mr. Rosenthal handed me, it appears from this that on the 10th of February, 1900, the price of oil in Newburgh was 10 cents. Have you any recollection of it whatever?—A. I couldn't say.

Q. And that in the latter part of 1902 it went up to 11 cents. Have you any recollection of that?—A. 1902?

Q. Yes.—A. No, sir.

Q. You have no recollection. Have you any recollection of
8171 what it was in 1903?—A. No, sir.

Q. What are you paying for oil now?—A. 9½ cents.

Q. Have you paid more than that in the last few years?—A. Not for a year or so.

Q. But before that, did you?—A. I don't know how far back; I couldn't tell you how far back.

Q. But you remember paying 11 and 12 cents, don't you, for oil in Newburgh?—A. I don't think I ever paid 12. I don't remember.

Q. Well, you paid 11?—A. Yes; I paid 11; I may have paid 12, too.

Q. For a long time you paid 11, didn't you?—A. No; they always change in the winter.

Q. The price is higher in the winter than in the summer?—A. Generally; yes.

Q. Mr. Hisgen testifies that he went on that trip down the river in the latter part of 1900 or the first part of 1901.—A. That might be; I couldn't tell you.

Q. You don't know whether he was in Newburgh at that time or not?—A. He may have, but I don't know just the time; no, sir.

By Mr. ROSENTHAL:

Q. You don't know of Hisgen Bros. selling any oil before the time you speak of, do you, in 1902, at Newburgh?—A. Well, they may have sold it there, but the only reason I say 1902 is because that was the time that I was secretary of the association; that was the
8172 reason why I referred to 1902, that was the year that I was secretary of the association.

Q. And that is when you first knew of the Hisgens?—A. Yes, sir.

8173 THOMAS B. KEATING called on behalf of the defendants, beduly sworn, testified as follows:

Direct-examination by Mr. ROSENTHAL:

Q. What is your full name?—A. Thomas B. Keating.

Q. Where do you live?—A. Copake Iron Works.

Q. Columbia County, New York?—A. Yes, sir.

Q. Whereabouts is that?—A. That is up the Harlem Railroad.

Q. Up the Harlem River?—A. The Harlem Railroad, the Harlem division of the New York Central.

Q. Is it on the Hudson?—A. No, sir.
Q. How far is it from Albany?—A. I should judge about 45 miles.
Q. How much of a town is it?—A. Oh, about 1,000 to 1,200.
Q. And how long have you lived there?—A. About 46 years.
Q. Practically all your life?—A. Yes, sir.
Q. What is your business?—A. Merchant.
Q. General merchandise?—A. Yes, sir.
Q. And that includes groceries?—A. Yes, sir.
Q. Do you seel oil, petroleum?—A. Sell oil; yes, sir.
Q. For illuminating purposes?—A. Yes, sir.
Q. How long have you been in business there?—A. 20 years.
8174 Q. How long have you sold illuminating oil?—A. 20 years.
Q. From whom do you buy your oil?—A. Buying now of the Standard Oil Company.
Q. And how long have you been buying from the Standard Oil Company?—A. More or less for 20 years.
Q. Do you know Hisgen Bros., of Albany?—A. Yes, sir; I have bought goods of them.
Q. When?—A. I have not bought any since last fall.
Q. At the time that you bought from them, whom had you been buying from just before that?—A. The Standard Oil.
Q. When did you first buy from Hisgen Bros.?—A. Well, now, I don't know that. I bought at different times and different years.
Q. As far back as 1901 or 1902?—A. I presume so.
Q. Who called on you representing Hisgen Bros. for the purpose of selling you oil?—A. There were different ones.
Q. Well, say, last year.—A. I don't know his name. I think he lives at Dover Plains. He has not been to my place but twice, to my knowledge.
Q. And did you make a purchase from him at that time?—A. I did.
Q. Please tell the circumstances, what was said, and what was done.—A. He came into my store. I sell oil by the barrel, and also I buy from the tank, but I have some customers that I sell barrels to, and I had been buying of the Standard Oil Company at 11¼.
8175 Q. 11¼ what? 11¼ cents a gallon?—A. 11¼ cents a gallon. And he stepped in the store this day, and I was pretty busy, and he told me who he was, and he gave me——.
Q. Who did he tell you he was?—A. Hisgen Bros.' agent. He gave me a price on oil, and I accepted it.
Q. What price did he give you?—A. 9 cents.
Q. What did he say when he gave you that price? Did he ask you what you were paying the Standard?—A. Yes, sir.
Q. What did you tell him?—A. 11¼.
Q. And what did he then say to you?—A. He said he could ship me some at 9 cents.
Q. Did he say that there was no need of your paying any such price?—A. No, sir, he did not.
Q. He said he would ship you oil at 9 cents?—A. Yes, sir.

Q. And what did you say?—A. I gave him an order.

Q. For how much?—A. I think it was five barrels.

Q. Do you remember when you first began buying some oil from the Hisgen Bros., about 1901 or 1902?—A. Well, I might have bought of them, but I don't remember, because I bought at different times.

Q. Do you remember at the time when you first began buying from them, or at any other time when you bought from them, whether the Standard, in order to get your trade back, offered you any special inducement?—A. No, sir.

8176 Q. Did the Standard or any of its representatives ever make any threats of any kind to you?—A. No, sir.

Q. Because of your purchasing oil of Hisgen Bros.?—A. No, sir.

Q. And never offered you any lower price?—A. No, sir.

Q. You never received any letters or telegrams from the Standard Oil Company, after you had purchased from Hisgens, urging you to cancel the Hisgen order?—A. No, sir.

Q. Or offering you, under such circumstances, a lower or a different price?—A. No, sir.

Q. Does the Standard have tank-wagon service in your town?—A. Yes, sir.

Q. And the service with respect to quality, character, during all the twenty years that you have purchased from the Standard has been satisfactory, has it?—A. Has been satisfactory, yes, sir.

Cross-examination by Mr. KELLOGG:

Q. You bought a few barrels last fall at 9 cents from Hisgens?—A. Yes, sir.

Q. 9 cents a gallon?—A. Well, I supposed it to be at 9 cents when I bought it.

Q. What?—A. It was supposed to be at 9 cents when I bought it.

Q. Well, that is what you testified to, wasn't it?—A. Yes, sir.

Q. What were you paying the Standard at that time?—A. 11½.

8177 Q. Did you continue to pay them 11½?—A. Yes, sir.

Q. Paid them 11½ ever since? How many years have you been paying 11½?—A. I don't know exactly, because oil varies.

Q. What?—A. I can't tell you exactly, because oil varies some times.

Q. What?—A. I couldn't say, because oil varies—the price—at different times.

Q. Do you know that the Standard was selling it in Springfield as low as 6 and 7 cents a gallon?—A. I had heard so.

Q. Do you know it sold it in other places at less than that?—A. No, sir.

Q. You heard of their selling it in Springfield?—A. Springfield, yes, sir.

Q. Do you know of any reason why they should get 6 or 7 cents in Springfield and 11 cents in your town?—A. No, sir; I do not.

Q. Then, it was true that there was no need of your paying any such price as 11½ cents, wasn't it?—A. Well, I don't know as to that.

Q. Well, if you paid 11½ cents, you charged so much more to your customers, that is all, isn't it?—A. Yes, sir.

Q. And if you paid 9 cents you charged your customers so much less?—A. Yes, sir.

Q. It really didn't make much difference to you, did it?—A. No, sir.

Q. Anybody else selling oil in your town?—A. Yes, sir.

8178 Q. Besides the Standard?—A. Oh, I don't know as to that. I think so.

Q. Who?—A. I think Roberts Bros. carry Hisgens' oil.

Q. Whose oil?—A. Four Brothers.

Q. Oh, you think they sell Hisgens' oil?—A. I think they do some, the same as I do, at times.

Q. At times?—A. Yes, sir.

Q. And you have bought from the Hisgens off and on for a number of years?—A. Yes, sir.

Q. Does oil sell cheaper in barrels than it does in bulk, usually?—A. You mean to buy?

Q. Yes, sir.—A. No, sir; I generally pay a little more in barrels.

Redirect examination by Mr. ROSENTHAL:

Q. I forgot to ask you. Are you in the Tenth Congressional District, the same as Albany is?—A. I think not.

Q. Have you ever received letters from Hisgen Bros.?—A. No, sir.

Q. Do you remember having received any letter of any kind from them?—A. No, sir.

Q. In connection with the purchase of oil?—A. No, sir.

(After the witness had left the stand he was recalled for further examination by Mr. Kellogg, as follows:)

8179 Q. That oil that you bought of the Hisgens at 9 cents, they charged you for the barrel, didn't they?—A. Yes, sir.

Q. That made the same price as the Standard was getting?—A. Yes, sir.

Q. 11 cents?—A. 11½ cents.

By Mr. ROSENTHAL:

Q. Now, what was the representation made to you by the Hisgen Bros.' agent in that regard?—A. Nothing more than he said that they could sell me oil at 9 cents.

Q. I wish you would tell all about that.—A. I told him to ship me five barrels. He did ship me five barrels.

Q. Did he ask you what price the Standard was charging?—A. 11½, just as I told you.

Q. And thereupon he said he could sell you oil at 2½ cents a gallon less?—A. No; he didn't say that.

Q. Just what did he say?—A. He said he could sell me some oil at 9 cents.

Q. And what did you understand from what he said with respect to the price?—A. I thought I was going to buy it at 9 cents.

Q. That is, you thought you were going to buy it at 2½ cents less than what you had been paying?—A. Yes, sir.

Q. And you ordered it for that reason?—A. Yes, sir.

Q. And you thought that because of what he had said to you?—A. Yes, sir.

8180 Q. Now, then, who was it that called your attention to the fact that you had been "hornswaggled" on that thing?—A. Mr. Bentley, the Standard Oil agent.

Q. Mr. Bentley is the local agent of the Standard Oil Company?—A. Yes.

Q. And it was he, then, that first called your attention to the fact that, although the ostensible price was 9 cents, as a matter of fact you were paying fully as much?—A. The same price.

Q. Or the same price as you had theretofore been paying?—A. Yes.

Q. Is that right?—A. That is right.

Q. And did he have any difficulty in demonstrating that to you?—A. Well, a little; yes.

Q. Tell us something about that.—A. He came in and wanted to sell me some oil; gave me his price.

Q. What price?—A. 11½.

Q. What did you say to him?—A. I says, "I bought better."

Q. Go ahead and tell us the whole conversation.—A. He said I hadn't. I said I had. He asked me the price and I told him. "But," he says, "you pay for the barrels." I said: "I don't think so." He said: "You do." I was so positive about it that I made a little wager with him.

Q. How much?—A. Five dollars.

Q. Then what happened?—A. My bill—I didn't know the bill was in the store at the time Mr. Bentley was there. After

8181 Mr. Bentley had gone out I found it. The barrels were charged to me at $1.25.

Q. And that brought the price——A. The same as the Standard.

Q. 11½ cents?—A. Yes, sir.

By Mr. KELLOGG:

Q. Now, did you sell the barrels?—A. I sold the barrels; yes, sir.

Q. At what price?—A. I think $1.25.

Q. It is customary to charge for the barrels, isn't it, where they sell oil in barrels?—A. It is; yes, sir.

Q. And they are always willing to take the barrels back, are they not?—A. Yes.

Q. At the same price?—A. Yes.

Q. So, as a matter of fact——A. But some places are a little different than others.

Q. When you bought of the Hisgens by the barrel, you always paid for the barrel and got your money back for it, didn't you?—A. Yes, sir.

Q. And that is what you did this time?—A. Yes, sir.

Q. And it is customary in selling oil to charge for the barrels unless they are returned?—A. Yes, sir.

By Mr. ROSENTHAL:

Q. Then, as a matter of fact, after you got the money back for the barrels, the net price to you was 9 cents, wasn't it?—A. About that; yes, sir.

8182 By Mr. KELLOGG:

Q. Now, it is usual in selling oil in barrels to sell at so much cheaper, isn't it, because the barrels are expensive; isn't that correct?—A. Yes, sir.

8183 JOHN R. HICKS, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is your full name?—A. John R. Hicks.

Q. Where do you live?—A. Catskill Station, New York, is my post-office address.

Q. And where is that?—A. That is in Columbia County.

Q. Is that on the river?—A. Yes, sir.

Q. On the Hudson?—A. On the Hudson River.

Q. And how far are you from Albany?—A. I think about 36 miles.

Q. Do you know whether you are in the same Congressional District as Albany is?—A. That I couldn't say.

Q. Did Hisgen ever run for Congressman in your district?—A. I don't remember anything about that.

Q. Did you ever get a letter from him——A. No, sir.

Q. Announcing his candidacy?—A. I don't remember.

Q. You don't know whether you are in the same district, I suppose?—A. That I couldn't say.

Q. What is your business?—A. Grocer; general merchandise.

Q. How large a town is Catskill Station?—A. It is a small village place, mostly farmers.

Q. Your trade is among farmers?—A. Yes, sir.

Q. And it is a village of some hundreds of inhabitants?—A. Oh, probable 100 or 150.

Q. How long have you lived at Catskill Station, Mr.
8184 Hicks?—A. About 20 years.

Q. During the 20 years that you have been a grocer at Catskill station——A. I didn't mean I had been in business that length of time; I had lived there that length of time.

Q. And have been a grocer there for 12 years?—A. I think about 16 years, if I remember right.

Q. Have you sold oil there?—A. Yes, sir.

Q. During all of that time?—A. Yes, sir.

Q. And from whom did you first purchase your oil when you started in business?—A. The Standard Oil Company.

Q. Did they have a station at Catskill?—A. No, sir. They had a station in Hudson.

Q. How far away was that?—A. 4½ miles.

Q. And how did they deliver the oil to you?—A. Well, I got it in barrels at that time.

Q. Where would you go for it—over to Hudson?—A. Sometimes drive to Hudson for it, sometimes get it from the station.

Q. It was sold to you f. o. b. at Hudson?—A. Yes, sir.

Q. In barrels?—A. Yes, sir.

Q. Do you remember one of the Hisgens calling upon you in 1902?—A. I don't remember just the date; I think it was somewhere in that neighborhood.

Q. Did he solicit your trade?—A. Yes, sir.

Q. Did you change to Hisgen Bros.?—A. I did.

Q. How long did you continue buying from Hisgens?—A. I think about two years.

8185 Q. For about two years?—A. Yes.

Q. And then did you go back to the Standard Oil Company?—A. I did.

Q. Why?—A. On account of having it delivered in tanks to my door.

Q. Now, tell us a little something about that, please. What do you mean by that? What was the advantage to you?—A. The advantage was that it saved me from drawing the oil and saved me from pumping it from the barrels into my tank.

Q. During the two years that you were buying from Hisgen Bros. where did you get your oil from? Was it delivered at your door?—A. I bought it from Albany. It was shipped to Catskill Station. It is now called Crandall Station.

Q. And then you had to haul those barrels to your store?—A. Yes, sir.

Q. And would you sell it from the barrels or would you put it into a tank?—A. I would put it into a tank.

Q. You had to do all that yourself?—A. I had to do all that myself; yes, sir.

Q. Empty the barrels into your tank and then pump from the tank when you sold it?—A. Correct.

Q. What was the reason you went back to the Standard Oil Company in 1904?—A. Well, it was because it was more convenient to have them deliver it in a tank.

Q. How more convenient?—A. Because they put it right in my tank. They drove to my door and put it in my tank.

Q. From their tank wagon?—A. From their tank wagon; yes, sir.

8186 Q. And that was the reason, was it, that you went back to the Standard?—A. Yes.

Q. At the time you quit buying from the Standard, in 1902, and began buying from the Hisgen Bros., what, if anything, did the Standard do to regain your trade?—A. They didn't do anything at the time.

Q. Did you get any threatening letters from them?—A. No, sir.

Q. Any telegrams from them?—A. No, sir. I don't remember anything.

Q. Any calls made by their agent in which threats of any kind were made against you?—A. I don't remember of any.

Q. Well, there were not any, were there?—A. I don't remember of any. No, sir.

Q. Were you offered any cut prices by the Standard if you would go back to them after having purchased from Hisgens?—A. I don't remember of any.

Q. Or during the two years you were purchasing from Hisgens Bros., did the Standard ever offer to cut the price——A. No, sir.

Q. To get your trade back?—A. No, sir.

Q. And when were you, as a matter of fact, again solicited by the Standard Oil Company? In 1904?—A. Well, I think somewhere in that neighborhood.

Q. That is, you purchased from Hisgens about two years?—A. I think so, yes, sir.

Q. And, as I understand it, the only reason that induced you
8187 to go back to the Standard was in connection with their tank wagon deliveries?—A. Correct.

Q. The superiority of their delivery as compared to the barrel delivery—is that right?—A. It saved me all that trouble of drawing it and everything of that kind.

Q. Hudson is about four miles away from Crandall or Catskill Station?—A. 4¼ miles from my place.

Q. Now, what is the basis of your price that you pay the Standard Oil Company?—A. At the present time?

Q. Yes, sir.—A. I pay 10 cents per gallon.

Q. Do you pay the Hudson price?—A. No, sir, they charge a half cent more to deliver it in the country.

Q. That is, you pay a half cent more than they do at Hudson?—A. Yes, sir.

Q. Because the station is at Hudson?—A. Yes, sir.

Q. And the haul is 4 or 4½ miles to your place?—A. Yes, sir.

Q. Is that right?—A. That is right.

Q. During those years that you were dealing with Hisgen Bros., do you remember having any correspondence with them?—A. No, sir, I do not.

Q. Do you remember receiving any letters, with a letter head like this? [Handing paper to witness.]—A. No, sir, only billheads.

Q. Billheads the same?—A. Yes.

Q. The billheads were like that, were they?—A. Yes. I don't remember receiving any letter. As near as I can remember.

8188 (Paper marked Defendants' Exhibit 88, for identification.)

Q. What do you say, Mr. Hicks, as to whether you are perfectly satisfied with the Standard Oil Company's service, treatment of you, the quality of oil that they deliver to you, and as to the prices at which they have sold?—A. I am perfectly satisfied.

Cross-examination by Mr. KELLOGG:

Q. You said when the Hisgens commenced to sell you, the Standard didn't do anything at the time. What did you mean by that?—A. They didn't come near me to solicit any trade at the time.

Q. At the time?—A. No.

Q. They did afterwards?—A. They did later on; yes, sir.

Q. What did they offer you then?—A. They had a route that went past me which didn't really pay them, and they wanted to add to the route for their tank wagon.

Q. What did they offer you then?—A. I don't remember the price that they offered me, but I think it was about the same as I had been paying.

Q. About the same?—A. Yes, sir.

Q. Well, wasn't it a little less, considering the barrels?—A. I couldn't say now. I don't remember.

Q. You don't know?—A. No, sir.

Q. You don't know whether they offered you a price less
8189 than the Hisgens were selling you or not?—A. I can't remember, now; no, sir.

Q. Don't you know they did sometime offer you a price less than that?—A. I couldn't say.

Q. What were you paying the Hisgens?—A. What did I pay the Hisgens?

Q. Yes.—A. I don't remember now.

Q. You don't remember?—A. No, sir.

Q. How big a place is Catskill Station?—A. Catskill Station is a small village place, about 100 or 150 residents.

Q. Anybody else but the Standard selling there?—A. No, sir.

Q. How many retailers are there there?—A. There is only one.

Q. That is yourself?—A. That is myself.

Q. The time the Standard agent solicited you, as I understand it, was in 1904, wasn't it, about two years after you had been buying from Hisgens?—A. As near as I can remember it.

Q. And before that time no Standard Oil representative had solicited you?—A. No, sir.

Q. And the price that you paid when you again began purchasing from the Standard was the Hudson price with one-half cent added?—A. One-half cent added; yes, sir.

8190 CHARLES W. BAXTER, called on behalf of the defendants, being duly sworn, testified as follows:

Direct-examination by Mr. ROSENTHAL:

Q. What is your full name?—A. Charles W. Baxter.

Q. Where do you live?—A. Newburgh, New York.

Q. How long have you lived there?—A. About 14 years.

Q. What is your business?—A. Grocer.

Q. And how long have you been a grocer in Newburgh?—A. 14 years.

Q. That is Newburgh on Hudson?—A. On the Hudson.

Q. You sell oil, do you?—A. Yes, sir.

Q. Have during all of those 14 years?—A. Yes.

Q. Do you know of the firm of Hisgen Bros., of Albany?—A. Yes.

Q. Did you ever make any purchases of oil from that firm?—A. I did.

Q. About what time did you first purchase?—A. I think it was in 1901 and 1902.

Q. From whom had you been buying just before that?—A. The Standard Oil Company.

Q. And do you remember how the Hisgen Bros.' price compared with the Standard Oil Company price?—A. It was one cent less.

Q. That is, the Hisgen's sold you at——.—A. 7½ cents.

Q. 7½ cents, and the Standard Oil price at that time was 8½ cents?—A. 8½ cents; yes, sir.

8191 Q. Is that right?—A. That is right.

Q. Is that the reason that you purchased from Hisgen Bros.?—It is.

Q. And the only reason?—A. And the only reason.

Q. Because they offered you oil at a cent a gallon less than the Standard were selling?—A. Yes.

Q. Did the Standard thereupon reduce its price to meet that Hisgen Bros.' price?—A. Not to me.

Q. Did it offer you any concession or any inside price of any kind?—A. No, sir.

Q. Did it offer you any inducement of any kind to resume buying from them?—A. None whatever.

Q. Did you receive any letter or any telegram at that time from the Standard?—A. None.

Q. Urging you not to buy from Hisgen's or to repurchase from the Standard?—A. No, sir.

Q. Or to defer buying from the Hisgen's until the Standard representative might see you concerning the price?—A. No.

Q. Nothing of that kind was ever received by you?—A. No, sir.

Q. Now, how long did you continue buying from Hisgen Bros.?—A. Oh, I think about a year.

Q. And during all the time that you purchased from them was their price a cent lower than the Standard price?—A. Yes, sir.

Q. And was that the reason during that year that you continued to purchase from Hisgen's?—A. Yes, sir.

8192 Q. Why did you return to the Standard Oil Company in the making of your purchases?—A. Because they advanced the price.

Q. Because the Hisgens advanced the price?—A. Because the Hisgens advanced the price.

Q. After having sold to you for a year at the price of a cent less, what did they then do?—A. They put the price up.

Q. Up to what?—A. I think it was 11 or 11½ cents.

Q. And how did that compare with the Standard price?—A. That was above the Standard.

Q. How much?—A. I think we were paying 9 cents to the Standard then, or 8¼, I forget which.

Q. And you then went back to the Standard?—A. I did.

Q. And have been purchasing from them ever since?—A. Ever since.

Q. And you pay the prevailing market price?—A. Yes.

Q. How is your oil delivered to you?—A. By tank wagon.

Q. From tank wagons?—A. Yes.

Q. You haven't any handling of the oil, then, at all?—A. No.

Q. Except when you sell it to your customers?—A. That is all.

Q. Is that a convenient method of delivery for the grocer?—A. Yes, sir.

Q. Much more convenient than barrel delivery, is it not?—A. Yes, sir.

Q. Much more desirable from every point of view?—A. Yes, sir.

8193 Q. Cleaner?—A. Oh, yes; cleaner.

Q. No waste?—A. No waste.

Q. And a handier way to handle it?—A. Yes.

Q. What do you say as to whether the Standard's treatment of you with respect to delivery of oil, the quality of the oil sold, and its general treatment of you as one of its customers during the 14 or 15 years that you have been in business, has been satisfactory or otherwise?—A. Very satisfactory.

Q. In every respect?—A. In every respect, sir.

Cross-examination by Mr. KELLOGG:

Q. You say you bought of the Hisgens about two years?—A. No; I think about a year. I think I commenced buying in 1901 and stopped in 1902. It may have been over a year.

Q. It may have been 1903?—A. No; I don't think——

Q. What?—A. Well, I don't know whether it was 1903 or not—I don't think it was—at the time they advanced the price of their oil.

Q. As a matter of fact, the latter part of 1902 and during the year 1903 its price was 11 cents, wasn't it?—A. Well, I don't remember as to that. They advanced it to 9, I know, and I think finally, afterwards, it was to 10. Whether it was afterwards 11½, I don't know.

Q. It appears by this sheet [paper handed to Mr. Kellogg by Mr. Rosenthal] that in December, 1902, the price went to 11 cents?—A. Yes.

Q. The price of the Standard oil in Newburgh?—A. Yes.

8194 Q. And during 1903 it was 10, 11, 11½, and 11?—A. Yes. Well, we must have paid the price.

Q. Then the Hisgens advanced the price to the same as the Standard Oil, didn't they?—A. At the time I left off buying of the Hisgens they wrote me a letter. I sent them a check. They said they would write me the price of oil before they shipped the order, and I think the price was 11½ cents. So I didn't buy any oil of them. I went back to the Standard. I think the Standard's price then was 9 cents.

Q. Well, they put it right up to 11½, didn't they?—A. I don't know; I don't remember.

Q. Do you know for sure that the Standard's price was 9 cents when the Hisgens advanced theirs to 11?—A. I know there was about 2 cents difference; I think there was.

Q. It didn't last long, did it?—A. I am not prepared to say.

Q. During the time you were buying from the Hisgens, who else was selling oil in Newburgh?—A. The Standard Oil Company.

Q. Anybody else?—A. No one, to my knowledge.

Q. No peddlers?—A. No peddlers.

Q. Sure of that?—A. Only what they bought of the Standard Oil Company; that is all I know of.

Q. Weren't there some peddlers selling oil there?—A. I don't know whom they got their oil from.

Q. Well, weren't there some peddlers?—A. Not to my knowledge.

Q. Do you know whether there were or not?—A. I do not.

8195 Q. Well, there have been at various times peddlers selling there, have there not?—A. Not to my knowledge.

Q. You don't know of it?—A. I don't know of anybody that peddled oil there since I have been in Newburgh.

Q. And no one ever sold there except the Standard and the Hisgens?—A. Except the Standard and the Hisgens; that is all I know of.

Q. Never knew of anybody else?—A. No, sir.

Q. During the year 1900, what was the price of oil at Newburgh?—A. That I don't know; I have forgotten.

Q. When the Hisgens sold you you were paying 9 cents?—A. To whom?

Q. To the Standard.—A. When the Hisgens sold to me?

Q. When the Hisgens started to sell you.—A. No; when they started to sell me I was paying 8½ cents.

Q. What did the Hisgens sell it for?—A. 7½ cents.

Q. In barrels?—A. In barrels.

Q. Did you pay for the barrels besides?—A. I was credited with the barrels when they went back.

Q. Now, isn't it customary to charge less for oil in barrels than when it is delivered in tanks at stores?

Mr. ROSENTHAL. They were both selling in barrels at that time, Mr. Kellogg.

Mr. KELLOGG. Let us see.

WITNESS. I don't know whether it was customary or not. The Standard, if I send down there and buy a barrel of oil now, they charge me, I think, a half cent a barrel more than they

8196 do in tank.

Q. Was the Standard selling you at that time in barrels or not?—A. Not at that time, when I was——

Q. They were selling by tank wagon delivery, weren't they?—A. Yes.

Q. And the Hisgens sold by barrels?—A. By barrels.

Q. And you paid for the barrel?

Mr. ROSENTHAL. Well, he said he was credited with the barrels.

WITNESS. The barrels are charged up to me, and when I send the barrels back I get credit.

Q. Yes. Now I ask you if it is not the fact, usually, in selling oil in barrels they have to sell it a little cheaper?—A. Well, I don't know.

Q. You don't know?—A. I don't know. I know the Standard don't sell any cheaper.

Q. Do you know at what price the Standard was selling in Albany?—A. No, sir.

Q. Or in Springfield, Massachusetts?—A. No, sir.

Q. Or any other place?—A. No, sir.

Q. Don't know anything about it. During most of the time you have paid from 10 to 11 and 11½ cents, haven't you?—A. Well, for the last two or three years we have not. I think last winter we paid 9½ cents.

Q. Since the Hisgens left there, there has been no one selling but the Standard?—A. That is all, to my knowledge.

8197 Redirect examination by Mr. ROSENTHAL:

Q. What is the prevailing price now?—A. 9½ cents.

Q. And about how long has that been the prevailing price?—A. I think about a year.

Q. And what was it just before that, do you remember?—A. I don't remember.

Q. More or less?—A. That I don't know. I don't know whether it was less. It appears to me it was more.

Q. Well, it is less now than it was in 1903, when it was up as high as 11½ cents?—A. Yes, sir.

Q. And Hisgen Bros. are not selling there now, as I understand it?—A. No, sir, not to my knowledge.

8198 ALMERON H. ROBERTS, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination, by Mr. ROSENTHAL:

Q. What is your full name, please?—A. Almeron H. Roberts.

Q. Where do you live?—A. Ravena, New York.

Q. Where is that?—A. It is about 13 miles this side of Albany, on the West Shore.

Q. Then, you are in the Albany Congressional district, are you?—A. Yes, sir.

Q. Mr. Hisgen ever run for Congress there?—A. Yes, sir.

Q. Do you remember getting a letter from him at that time?—A. Yes, sir.

Q. I show you a letter marked Defendants' Exhibit 89. Did you receive such a letter as that?—A. Well, as near as I can tell, it was.

Mr. KELLOGG. Let me see it.

Mr. ROSENTHAL. I offer it in evidence.

Q. Mr. Hisgen was a candidate for Congress at that time, was he?—A. Yes, sir.

Mr. KELLOGG. I object to the testimony. There is not the slightest relevancy to anything in this case.

Mr. ROSENTHAL. I will connect it.

Mr. KELLOGG. It is objected to as irrelevant and immaterial.

Q. On the Independence ticket?—A. Yes, sir.

8199 Q. And his battle cry was "Standard Oil Monopoly," wasn't it?—A. I think it was.

Mr. KELLOGG. Same objection.

Q. What?—A. I think so.

Q. The Hisgen brothers have used that battle cry as a means of getting business during the last ten or fifteen years and also as a means of getting into politics, haven't they?—A. Well, I couldn't say as to that.

Q. Thomas L. Hisgen, who is president of Hisgen Bros., is the man who is candidate for President on the Independence ticket, isn't he?—A. I believe so.

Mr. KELLOGG. Same objection.

Q. George, I notice, is the man who signed this letter; he ran for Congress?—A. Oh, I couldn't discriminate the names; I am not acquainted with the parties.

Q. There are two other Hisgens, Gus and Henry. Do you remember of any office that they ran for?—A. No.

Q. You don't know about that. Have you ever been at their factory?—A. No, sir.

Q. Did you ever buy any oil from them?—A. A few barrels; yes, sir.

Q. When?—A. I couldn't exactly tell; it was some years ago.

Q. About 1901 or 1902?—A. I couldn't tell. It was previous to the tank wagon of the Standard starting in there.

Q. From whom had you been buying before that?—A. From different parties. I had bought from the Standard and from the jobbers in general.

Q. I didn't ask you what your business was.—A. Grocer.

8200 Q. A grocer at Ravena?—A. Yes, sir.

Q. How large a town is Ravena?—A. About 1,800.

Q. You have been a grocer there for how many years?—A. 14 years.

Q. When you first bought from Hisgen Bros., why did you buy from them?—A. On account of the price.

Q. What price did they make you, as compared with the Standard price at that time?—A. I think 1 cent cheaper.

Q. One cent cheaper than the Standard?—A. Yes, sir.

Q. And that is the reason you bought from them, is it?—A. Yes, sir.

Q. Now, when you bought from Hisgen Bros., at a cent cheaper than the Standard price at that time, what did the Standard do to get your business back?—A. Nothing.

Q. Didn't they write you any threatening letters?—A. No, sir.

Q. Or send you any threatening telegrams?—A. Nothing of the kind; no, sir.

Q. Didn't any of their agents call upon you and make threats against you?—A. No, sir.

Q. Nothing of that kind took place?—A. Nothing of the kind; no.

Q. Did they try to stop you or prevent you in any way from purchasing from Hisgens?—A. No, sir.

Q. When did you begin purchasing again from the Standard?—A. When they started in with the tank wagon.

Q. When was that?—A. I couldn't say exactly; I don't remember the year.

8201 Q. About how long after the first purchase from Hisgen Bros.?—A. Oh, I probably purchased 15 or 20 barrels from Hisgen Bros., maybe more; I couldn't say. It is a good while ago.

Q. The reason you started again with the Standard was because of their tank-wagon service which they instituted at that time?—A. Yes, sir.

Q. Prior to that time, had their service been a barrel service?—A. All barrels; yes, sir.

Q. You did not, then, go back to the Standard because of any price inducement that was made to you?—A. No, sir.

Q. Were you solicited by the Standard?—A. No, sir.

Q. When you returned to that company in the making of your purchases?—A. Yes, sir.

Q. What?—A. I solicited them to stop with their wagon.

Q. You solicited them to stop with their wagon?—A. Yes, sir.

Q. Well, did the Standard ever offer to cut Hisgen Bros.' price?—A. No, sir.

Q. And during the years that you have been dealing with the Standard, has the service been satisfactory?—A. Perfectly so; yes, sir.

Q. Oil of a satisfactory quality?—A. All right; everything.

Q. And satisfies your customers?—A. Everything has all been perfect.

Q. And your treatment has been a businesslike treatment, has it?—A. Yes, sir.

8202 Cross-examination by Mr. KELLOGG:

Q. How big a town is Ravena?—A. About 1,800 people.

Q. Before the Hisgens went in there to sell oil the Standard had no tank station there?—A. No, sir.

Q. They didn't deliver by tank wagon?—A. No, sir.

Q. And you bought by the barrel?—A. Yes, sir.

Q. Do you remember the prices that you were paying for the barrels?—A. No; I couldn't.

Q. You don't remember?—A. No, sir.

Q. Was it about 11 cents?—A. I couldn't tell.

Q. Do you remember the price the Hisgens charged you?—A. I do not.

Q. How do you know it was a cent less?—A. I remember from my change. I thought I was buying cheaper, and that is why I changed.

Q. You don't remember whether you paid a big price or a small price?—A. No; I couldn't tell.

Q. You don't know what oil was selling for in Albany?—A. Not at that time; no.

Q. Are Hisgens selling there now?—A. In Ravena?

Q. Yes.—A. No; I think not.

Q. Have they been since you quit them?—A. Well, possibly. I don't know as to that.

Q. Now, I notice this letter. Was this sent to you?—A. Not that one; no, sir.

Q. Oh, this one was not sent to you?—A. Not that one; no, sir.

8203 Q. But you got one something like that?—A. Something like that; yes, sir.

Q. Now, your letter didn't say anything about Standard Oil, did it?—A. I couldn't say; I couldn't swear to it. It went on something about monopolies. I couldn't tell exactly about monopolies.

Q. There is not a word in this letter about——A. I didn't preserve the letter.

Q. You didn't preserve the letter?—A. No; I did not.

Q. How many years ago is that?—A. I couldn't tell. It is only a few years ago.

Mr. ROSENTHAL. Been running so continuously he can't distinguish the dates. Is that right?

Mr. KELLOGG. Now, then, you wait. If you want to go on the stand I will cross-examine you about your political experiences.

Mr. ROSENTHAL. Blaze away.

Q. Now, in this letter he doesn't say a word about monopoly or anything else, does he?—A. I can't tell what it says now.

Q. Just look at it and see if there is a word about Standard Oil or monopoly, or anything like that.—A. I couldn't say my letter was exactly like that, but I received a letter of this description from them.

Q. Did he ever call on you?—A. Not this gentleman; no.

Q. Well, other people have been running for office in your district, I suppose?—A. Yes.

8204 Q. Did you ever hear them mention such a subject as a monopoly?—A. You hear of it nearly every day; yes, sir.

Q. So Hisgen hasn't got a monopoly on that?—A. No; not wholly.

Mr. ROSENTHAL. On that war cry, oh, no. That is good all along the line.

8205 CHARLES T. ARNOLD, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. Will you give me your full name, please?—A. Charles T. Arnold.

Q. Where do you live?—A. Stissing, New York.

Q. Where is Stissing?—A. At the junction of the N. D. & C. and Poughkeepsie & Eastern.

Q. How far from Albany?—A. About 100 miles.

Q. Is it on the Hudson River?—A. No, sir. It is inland.

Q. On the west side or east side of the river?—A. East side.

Q. How far is it from New York City—about 100 miles?—A. About 95 or 100 miles.

Q. How large a town is it?—A. There is no village there; it is all farming country.

Q. There is a junction of two railroads there?—A. Just the junction.

Q. There is a station?—A. Yes, sir.

Q. And you have a department store there, have you?—A. Yes, sir; general merchandise.

Q. General merchandise store. Do you sell groceries?—A. Yes, sir.

Q. How long have you been doing that?—A. 10 years.

Q. And also sell oil, do you?—A. Yes, sir.

8206 Q. How long have you been selling oil?—A. 10 years.

Q. From whom did you first buy your oil?—A. I first bought from Benjamin Hammond, at Fishkill-on-the-Hudson.

Q. Benjamin Hammond, he was a dealer at Fishkill?—A. At Fishkill-on-the-Hudson.

Q. And when did you begin buying from him?—A. When I first began business, ten years ago.

Q. How was the oil delivered to you by Mr. Hammond?—A. It was shipped to me in barrels by the railroad.

Q. That was Standard oil, was it not?—A. Yes, sir.

Q. Mr. Hammond was a jobber doing business with the Standard Oil Company?—A. As I understand it, he was selling Standard oil.

Q. How did you get the oil from Fishkill to Stissing?—A. Over the N. D. & C. Railroad.

Q. And sold it in barrels?—A. I bought it in barrels and pumped it into a tank—I had a tank—and then sold from the tank in the store.

Q. It was sold to you as barreled oil?—A. Yes, it was barreled oil.

Q. How long did you continue buying from Hammond?—A. About six years, I think.

Q. That would be about 1904?—A. About that time.

Q. Do you know Hisgen Bros., of Albany?—A. Not personally.

Q. Did you ever do any business with them?—A. Yes, sir.

Q. When?—A. It was about four or five years ago, about

8207 1903 or 1904; I can't tell the day.

Q. And under what circumstances did you begin buying oil from Hisgen Bros.?—A. Well, they had an agent that came through there and wanted to sell me oil, and I bought a carload of him, 60 barrels.

Q. At what price?—A. 11 cents.

Q. And what was the Standard price at that time?—A. Why, I was paying them 13 cents.

Q. Was that the reason you bought from Hisgens?—A. Yes, sir.

Q. Because the price was cheaper?—A. Yes, sir.

Q. And how long did that carload of oil last you?—A. I couldn't tell exactly, but I think a year.

Q. After you bought the carload of oil from Hisgens, and before it was received by you, did you get any letter or telegram from the Standard Oil Company or from Mr. Hammond?—A. No, sir.

Q. Did anyone call upon you with respect to that purchase?—A. No, sir.

Q. Any threats of any kind made against you in connection with that?—A. No, sir.

Q. Any offer by any Standard representative, or by Mr. Hammond, by anyone representing Hammond, to sell you oil at a less price than what you had paid Hisgens if you would cancel that order?—A. No, sir.

Q. Nothing of that kind?—A. No, sir.

Q. Now, during the year that that carload of oil lasted
8208 you, were you solicited by any Standard representative?—A. I was.

Q. Tell us about that, please.—A. A gentleman came there and asked me how I would like to have oil delivered by a tank wagon, and I told him that I thought it would be very nice, because I didn't like to handle barrels; they were dirty and it was disagreeable work to handle oil in barrels, and I thought a tank wagon would be very nice.

Q. Did this representative of the Standard indicate to you that they would put in tank-wagon delivery then at Stissing?—A. He said they were talking of building a tank at Pine Plains.

Q. How far was that from Stissing?—A. Six miles.

Q. And what did you say with respect to that?—A. Well, I told him that if I could buy oil of them as cheap as I could anybody else and have it delivered at my door, why, that would be satisfactory to me. I had no choice of whom I bought.

Q. And did they subsequently build a tank station at Pine Plains?—A. They did.

Q. When was that—in 1905?—A. I couldn't tell you as to the year, but I should think about that time.

Q. Did they then begin running a tank wagon over to Stissing?—A. I think as soon as the tank at Pine Plains was completed they came through there with a wagon.

Q. Did you then begin purchasing from them?—A. I did.

Q. Why?—A. Because it was more convenient.

Q. Did the Standard cut the Hisgen price in order to get
8209 your trade back?—A. No; there was nothing said about the price.

Q. Do you remember the price at which you began paying for oil from the tank wagon?—A. No, sir; I couldn't tell.

Q. Was it 12 or 12½ cents?—A. It was about that price.

Q. Now, what was the advantage, if any, to you in tank-wagon delivery, as compared with barrel delivery?—A. Why, I considered I got better measure. In buying by the carload I found before the car was used up there was quite a good deal of leakage. I lost quite a good many gallons from leakage. The tank being so much cleaner and nicer and no bother in handling, I thought it a great convenience.

Q. That is, when you got your oil delivered by the railroad company in barrels you had to unload it?—A. I had to unload it; yes; and store it.

Q. Handle it yourself?—A. Yes.

Q. Store it?—A. Yes; draw it off.

Q. Empty it in your tanks?—A. Yes.

Q. And all that you had to do yourself?—A. Yes, sir.

Q. And then with that there was leakage, as I understand you?—A. Yes, sir.

Q. In connection with that carload of oil you bought from Hisgen Bros.?—A. Yes; there was some of that leaked.

Q. There was leakage there?—A. Yes, sir.

Q. About how much in the course of that year; do you remember?—A. I couldn't say as to how much, but there were three barrels that leaked quite badly, quite a number of gallons, but
8210 of course I didn't measure it and I couldn't tell.

Q. Well, it is a dirty job, handling barreled oil, isn't it, for a grocer?—A. It is.

Q. One that he wants to get away from if he can?—A. Yes; and the men, too.

Q. Did you ever endeavor to buy oil from Hisgen Bros. again after that one carload purchase?—A. No, sir; I did not.

Q. Now, the Standard Oil Company, or its representative or agent, has never threatened you in any way, either by word of mouth or by letter or by telegram?—A. No, sir.

Q. Didn't at the time that you were selling Hisgen Bros.' oil?—A. No, sir.

Q. And never made any price concession of any kind to you?—A. No, sir.

Q. And your reason for purchasing from the Standard after you had purchased from Hisgens was because of the tank-wagon delivery, the convenience, and the installation of their tank-wagon station at Pine Plains?—A. At Pine Plains.

Q. And what do you say as to whether the Standard's service, the quality of its oil, its treatment of you as one of its customers, have been entirely satisfactory to you?—A. It has.

Q. During all the years you have done business with it?—A. Yes.

Cross-examination by Mr. KELLOGG:

Q. When was it the Hisgens first sold you; between 1903 and 1904 somewhere?—A. Well, I think so; I couldn't swear to the
8211 date.

Q. How many years before that had you been buying oil from the Standard, through Mr. Benjamin Hammond?—A. I had been buying all the time I had been there. I had been in business for ten years.

Q. Previous to that?—A. Yes, sir.

Q. And you had paid a price of about 13 cents?—A. I don't think I paid about 15 cents; I paid about 13.

Q. 13 I said.—A. Yes.

Q. During all of those years?—A. No; there was a change. The price fluctuated; sometimes it would be more and sometimes less. Of course I never questioned his price.

Q. Now, during all those years they were selling you oil at from 12 to 14 cents?—A. I don't know as I ever paid as high as 14. I know I was paying 13 at the time I bought from Hisgens.

Q. And for many years before had you been paying about the same price?—A. I think so.

Q. And you had been shipping in barrels?—A. Yes.

Q. They had no tank station near you?—A. No.

Q. They didn't put in the tank station until after Mr. Hisgen began to sell you oil?—A. No.

Q. Barrel oil will never compete with tank station oil, will it, at the same price?—A. No; I don't think it will.

Q. So far as selling oil in barrels, a man has a handicap against him, anyhow, hasn't he?—A. Yes.

Q. You got a tank station by reason of their selling you oil, didn't you?—A. Yes.

8212 Q. Well, you got some benefit, didn't you?—A. Yes.

Q. 13 cents was an exorbitant and unreasonable price, wasn't it?—A. I thought it was a large price; yes.

Q. And you had been paying that for years?—A. I can't tell you how much I had been paying.

Q. You are paying 12 cents now, aren't you?—A. I am paying 10 now.

Q. And you paid, after the Hisgens were there a while, 12, did you say?—A. Yes.

Q. Now, don't you know that during the same time you were paying 12 and 13 cents the Standard was selling oil at Springfield for 6 and 7 cents?—A. No; I didn't know that.

Q. Well, you have learned it since, haven't you?—A. I have heard it said so to-day.

Mr. ROSENTHAL. That is, you heard Mr. Kellogg say so.

Q. Haven't you heard it before you heard it from me?—A. No; I hadn't heard it until I came into the court room to-day.

Mr. ROSENTHAL. You know he isn't under oath.

Mr. KELLOGG. Give me that schedule of prices and I will give you the information of it that is sure. It comes from the Standard Oil, and I presume it should be correct. I want the statement that is in evidence.

Q. Did you ever inquire to see what other people were paying in other towns?—A. Well, I knew what people were paying around me.

Q. Right around you?—A. Yes; in the smaller towns.

Q. But I mean away—anywhere.—A. No; I never inquired
8213 what they were getting in large cities.

Q. Where was your oil shipped from—New York?—A. From Hammond?

Q. Yes.—A. Hammond's oil came from Fishkill-on-the-Hudson.

Q. I know, but where did it come from to that place?—A. I couldn't tell. I don't know where he bought it.

Q. It came from the refineries down in New York?—A. I don't know.

Q. There are no refineries in Fishkill?—A. No.

Q. Or in Albany?—A. Well, I don't know about Albany.

Q. How far are you from Albany?—A. 100 miles.

Q. How far is Springfield from Albany?—A. That I don't know.

Q. Now, I notice that during part of the month of October, 1904, by an exhibit in evidence furnished by the Standard Oil Company, that oil was selling at Springfield at 8 cents a gallon.—A. Well.

Q. Do you know of any reason why it should be any cheaper in Springfield than at your place?—A. No, I do not.

Q. The freight wouldn't be any more, would it?—A. I don't know any thing about the freight rates.

Q. Springfield is a long distance from Albany, isn't it?—A. I should think so.

Q. And it is farther from New York than you are?—A. Yes.

Q. Do you know what oil was selling for at Albany at that time?—A. No, I do not.

Q. After the tank-wagon station of the Standard Oil was built near you, the Hisgens never offered to sell you any more oil?—
8214 A. No, they never came there at all.

Q. They would have to sell it cheaper in order to sell it, wouldn't they?—A. Yes. If I bought oil by the barrel I should want to buy it cheaper than I should from the tank wagons.

Q. That is usual, isn't it?—A. Yes, I think so.

Q. Now, with the exception of Hisgens, has anybody else than the Standard ever sold any oil in your town?—A. No; they are the only two.

Q. So you have no competition there now at all?—A. No.

Redirect examination by Mr. ROSENTHAL:

Q. You have been asked by Mr. Kellogg whether, while the Standard was selling at 12 and 13 cents to you at Stissing, you did not know it was selling at 8 or 8½ cents at Springfield.—A. No, sir; I did not.

Q. And you said you didn't know?—A. No.

Q. I don't suppose you know, either, that at the time that Hisgen Bros. were charging you 11 cents at Stissing they were selling oil at Springfield at 7½ cents, did you?—A. No, sir.

Q. You don't know either of those things?—A. No, sir.

Q. And you have not really any knowledge of what oil was selling for at Springfield, or if it was selling at 7, or 7½, or 6½, why it was selling at that price?—A. No.

Q. And whether it was selling at that extremely low price at Springfield because Hisgen Bros. started to cut prices there and ran the goods down to 7½ cents, or not; you don't know
8215 anything about that?—A. No, I know nothing about it whatever.

Q. Of course not.

(A recess was here taken until 2 o'clock p. m.)

8216 PETER J. WAGNER, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is your full name?—A. Peter J. Wagner.

Q. Where do you live?—A. Albany, New York.

Q. What is your business?—A. Mail carrier.

Q. How long have you been a mail carrier?—A. July 1, 1906.

Q. Were you ever in the employ of the Standard Oil Company?—A. Yes, sir.

Q. When?—A. About 12 years prior to July 1, 1906.

Q. Where were you employed?—A. At Albany, New York.

Q. And what was your work for the Standard?—A. Tank-wagon driver.

Q. In Albany?—A. In Albany.

Q. Upon whom did you call? I mean in a general way. Upon the retail trade?—A. Upon the retail grocerymen.

Q. Do you know a man by the name of John Ahearn?—A. Yes, sir.

Q. Where does he live?—A. He is located at the People's Hotel, at Broadway, Albany, now. At that time he conducted a grocery store at 70 Sheridan avenue.

Q. At 70?—A. At 70 or 71.

Q. Sheridan avenue?—A. Yes, sir.

Q. Mr. Ahearn was a witness for the Government, and testified, in substance, that in 1904 or 1905, while he was paying 8
8217 or 8½ cents a gallon for oil bought from Hisgen Bros., that you called upon him and contracted to sell him oil for the next six months at 2 cents a gallon less than the then prevailing price, and that you offered him that concession in the way of a rebate. Do you remember calling upon Mr. Ahearn at or about that time?—A. Yes, sir.

Q. For the purpose of selling him oil?—A. Yes, sir.

Q. Was he then buying from Hisgens?—A. Yes, sir.

Q. Did you have any talk with him about coming back to the Standard?—A. Yes, sir.

Q. Please tell us just what that was.—A. It was the late part of the winter of 1905. I was informed by Mr. Kahnle, our superin-

tendent, that the price of oil was to decline to 7 cents a gallon. I called upon Mr. Ahearn, to whom I had not sold any oil in over a year, asking him why we could not sell him oil, and he said he had been buying his oil from Mr. Hisgen and there was no object for him to change. I asked him if I sold him oil for 7 cents a gallon, would he buy oil from me. He said he would. I told him any oil that he would buy at that time he would have to pay for at the then prevailing price, which was either 8 or 8½, I am not sure which. He bought 30 gallons from me and paid for it at the prevailing price on that day.

Q. Which was 8 or 8½ cents?—A. Which was 8 or 8½ cents; yes, sir. On my next trip to Mr. Ahearn the price had declined to 7 cents a gallon.

Q. You say the price had declined to 7 cents a gallon. What
8218 do you mean by that?—A. That it had gone down, the wholesale price.

Q. The tank-wagon price in Albany?—A. The tank-wagon price in Albany had declined to 7 cents a gallon; yes, sir.

Q. And then what?—A. He continued buying from me until I left the company, July 1, 1906, and always paid the prevailing price, that is, the price we charged to everybody.

Q. Then, as I understand you, you never offered to give him a rebate?—A. No, sir.

Q. Or to make a concession of any kind?—A. No concession was intended.

Q. Or to make a cut on the prevailing market price?—A. No, sir; no such thing was intended.

Q. Did you contract to sell him at that price for six months?—A. No, sir. He asked me how long I thought that price would last, and I told him, as he well knew, the price of oil never varies till the fall.

Cross-examination by Mr. KELLOGG:

Q. When was it you had this conversation?—A. In the late part of the winter of 1905; I don't just remember. It was in March or somewhere around that time.

Q. In the latter part of the winter of 1905 you sold him oil in Albany at 8½ cents a gallon, did you?—A. At 8 or 8½, I am not positive which.

Q. That would be in what month—March, April, or May?—
8219 A. In the latter part of March or the early part of April; I am not positive which.

Q. What was he paying Hisgen for it at that time?—A. I don't know whether the price was the same as ours or not, but it was either 8 or 8½ cents.

Q. Whatever it was?—A. Yes, sir.

Q. And you didn't sell it to him for 7?—A. No, sir; that is, that 30 gallons.

Q. That 30 gallons?—A. Yes, sir.

Q. The next time you went around you sold him at 7?—A. Yes.

Q. That 30 gallons you sold him the latter part of March or first part of April?—A. Yes, sir.

Q. For 8 or 8½?—A. Yes, sir.

Q. Now, you didn't promise him anything for that at all?—A. No, sir.

Q. No concessions of any kind?—A. No concessions of any kind.

Q. Were any concessions of any kind thereafter made to him?—A. No, sir.

Q. Was it reduced to 7 cents?—A. It was reduced to 7 cents to everybody.

Q. And was this 30 gallons reduced to him?—A. No, sir, it was sold to him at the prevailing price, which was either 8 or 8½.

Q. According to the statement of prices from the Standard Oil books, which is in evidence, Exhibit 635, page 6, the price of oil in March, April, May, June, July, August, and September,
8220 in Albany, was 7 cents a gallon?—A. Well, it may have been in February; I am not positive.

Q. In February it was 9 cents.—A. It was in the late part of the winter.

Q. Then, you are mistaken about it being the latter part of March?

Mr. ROSENTHAL. February of what year?

Mr. KELLOGG. 1905.

Mr. ROSENTHAL. Where are those figures, Mr. Kellogg [Mr. Kellogg hands copy of Exhibit 635 to Mr. Rosenthal]?

Q. Did Mr. Ahearn buy candles of the Standard Oil Company?—A. I don't know.

Q. Did they have a bill against him for candles which they canceled?—A. Not that I know of. I knew nothing about that part of the business.

Q. Never heard of that?—A. No, sir.

Q. You didn't sell candles yourself?—A. No; all I sold was oil.

Q. You don't know that the Standard didn't make him a rebate?—A. I know nothing about that.

Q. You know that you didn't promise it?—A. I know that I did not.

Q. Was something said about selling oil at 7 cents?—A. Oh, yes.

Q. You talked with him about it, did you?—A. Not with him. Every groceryman in Albany.

Q. At this time you sold the 30 gallons, wasn't there any
8221 conversation about selling it at less than 8 cents?—A. No, sir. I only asked him if I would sell him oil for 7 cents a gallon would he buy from me.

Q. You asked him that question, did you?—A. Yes, sir; and he said he would.

Q. And what did you say to that?—A. Then I told him that if he bought any oil from me on that day that he would have to pay the prevailing price. He took 30 gallons and paid for it.

Q. Then, you didn't ask him any questions about it at all?—A. Only asked him why we couldn't sell him oil, and he told us there was no object in changing.

Q. He told you that there was no object in his changing unless he could get a better price, did he?—A. Well, he didn't mention anything about price.

Q. He said there was no object in his changing?—A. He said there was no object in his changing.

Q. But he did change?—A. He did change, yes.

Q. And he got no better price?—A. I don't know what their price was when ours went down to 7; I don't know whether they changed to that or not.

Q. Didn't he tell you what he was paying?—A. No, sir.

Q. He didn't tell you what he was paying when you offered him this oil at 8 cents?—A. No, sir.

Q. You don't know that wasn't a cut?—A. I don't understand what you mean.

Q. That was the prevailing price when you made that offer, was it?—A. 8½ or 8 cents?

8222 Q. Yes.—A. Yes, sir.

Q. So he changed over from Hisgens to you without any reason whatever?—A. To the best of my knowledge and belief he changed from them because he could buy his oil from me for 7 cents.

Q. Well, I thought you said you didn't sell it to him for 7?—A. Following that one delivery I sold it to him.

Q. Did you agree that after that one delivery you would sell it to him at 7 cents?—A. No; I didn't state any particular time.

Q. What did you say to him?—A. Just simply asked him if he would buy oil from me if I sold it to him for 7 cents a gallon. I made no——

Q. And he said he would?—A. He said he would; yes, sir.

Q. And then you told him that you would not do it?—A. On that one day.

Q. Yes. You told him that you would not on that one day, and he bought 30 gallons that day at the 8-cent price?—A. At the old price; yes, sir.

Q. And did you promise him that afterwards you would make it 7?—A. I didn't say on what particular day.

Q. But you said you would make it 7?—A. Yes.

Q. And you did?—A. I did.

Q. But the prevailing price on that day was 8 cents?—A. On what day?

Q. On the day you sold him the 30 gallons.—A. Yes, sir.

8223 Q. But you told him that if he would buy the 30 gallons you would sell him the next at 7 cents?—A. No; I didn't say the next.

Q. You said you would sell him some at 7 cents?—A. I said I would sell him some at 7 cents.

Q. And the prevailing price when you said that was 8 cents?—A. Yes.

By Mr. ROSENTHAL:

Q. But you had already been advised that the prevailing price would thereafter be 7 cents, had you not?—A. Yes, sir.

Q. And when you told him that you simply told him what you knew the price was to be in the future——A. Yes, sir.

Q. Throughout that entire territory?—A. Yes.

Q. Now, you were shown Exhibit 635. That shows the average price during the month of January, 1905, to have been 9½ cents and the average price during the month of February to have been 9 cents. I show you these figures that are attached to your statement, which show that on January 9, 1905, the price was 9 cents, January 26 8 cents, February 6 7½ cents, and February 13 7 cents, and so remained until September 18, 1905. How does that accord now with your recollection of what the prices were at that time?—A. I don't just exactly remember, but I think that is somewhere near it.

Q. These prices that Mr. Kellogg cross-examined you about from this exhibit here are simply the average prices for that month, and the prices might have changed from time to time during the month. That is all.

By Mr. KELLOGG:

Q. But the prevailing price when you sold him that 30 gallons was 8 or 8½ cents?—A. Yes, sir.

8224 Q. He didn't know that it was going to be reduced, did he?—A. No, sir.

Q. You didn't tell him?—A. No, sir.

Q. You told him you would sell him oil for 7 if he would buy that 30 gallons for 8?—A. No, sir.

Q. Well, what did you tell him?—A. I asked him if he would buy oil from me if I sold it to him for 7 cents a gallon.

Q. What did he say?—A. He said he would.

Q. Then, he did it?—A. Not that day.

Q. Didn't you tell him you would sell him some for 7?—A. Yes, sir.

Q. That is what I thought.

Mr. ROSENTHAL. That is what the witness has been telling you.

8225 ELBERT L. PAULEY, being duly sworn as a witness on behalf of defendants, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is you name?—A. E. L. Pauley.

Q. What does the "E" stand for?—A. Elbert.

Q. Where do you live?—A. Birmingham, Alabama.

Q. And what is your business?—A. I am with the Standard Oil Company.

Q. In what capacity?—A. As special agent.

Q. At Birmingham?—A. Yes, sir.

Q. For how many years?—A. I have been special agent for about three years and a half. Prior to that I was assistant special agent.

Q. For how long?—A. About two years, or since January, 1903, until July of 1905.

Q. You started with the Standard Oil Company, then, in January, 1903?—A. No, sir; I started with them several years prior to that. I started at Birmingham on that date.

Q. How long have you been in the employ of the Standard Oil Company?—A. Ten years.

Q. Before you were at Birmingham where were you?—A. Indianapolis, Indiana.

Q. For how long?—A. About one year.

Q. Whom did you succeed at Birmingham as special agent?—A. Mr. A. J. Mapes.

Q. How large a city is Birmingham?—A. Well, that depends.

8226 Q. Oh, approximately?—A. 125,000 they call it now.

Q. It is a large city?—A. Yes, sir.

Q. As special agent there, what are you duties?—A. I have charge of the marketing end of the business at that station.

Q. That is a main station, is it?—A. Yes, sir.

Q. And how extensive is your territory there?—A. It covers practically all of Alabama and a part of Mississippi.

Q. What are your relations to these subsidiary stations?—A. They make their reports to my office, and I manage the men handling those stations, instruct them as to the manner in which they should conduct their business.

Q. As to prices?—A. Yes, sir.

Q. And as to the general conduct of their business?—A. Yes, sir.

Q. Where do you get your oil from?—A. I get it from different sources, different refineries.

Q. And where do these substations of yours get their oil from?—A. They get it direct from the refineries.

Q. The same as you do?—A. Yes, sir.

Q. Do you know a man by the name of Wofford?—A. Yes, sir.

Q. Where does he live—G. T. Wofford?—A. Birmingham, Alabama.

Q. What is his business?—A. The oil business.

Q. What is the style of his concern?—A. The G. T. Wofford Oil Company.

Q. How long has he been in business there? Some years?—A. About two years, in this particular company, I should judge.

8227 Q. Do you remember a concern by the name of the Alabama Oil Company?—A. Yes, sir.

Q. Mr. Wofford testified that that was the company that was secretly purchased by the Standard and thereafter secretly run until 1904 or 1905 or 1906 by the Standard for the purpose of getting customers that would not purchase from the Standard. You remember that company, do you?—A. I remember the company; yes, sir.

Q. When you went to the Standard in 1903, how was the Alabama Oil Company operated?—A. I don't know anything about the operation except that they were in the oil business. I had nothing to do with them.

Q. When I ask you how they were operated, I mean under what name?—A. The Alabama Oil Company at that time; later on they were operated under the name of the Alabama Oil Company, Agents for the Standard Oil Company, or at least their stationery bore that information.

Q. And when was that?—A. I don't recall, but I think it was in the latter part of 1903 or the first part of 1904.

Q. So, they then operated from that time on as the Alabama Oil Company, Agents of the Standard Oil Company?—A. Yes, sir.

Q. How long did they continue in operation?—A. About one year after that, if I remember correctly; I don't know the exact date.

Q. As agents for the Standard?—A. Yes, sir.

Q. Are they now separate from the Standard?—A. Yes, sir.

Q. Have no connection with the Standard Oil Company at all?—A. None whatever.

Q. And do they still continue as the Alabama Oil Com-
8228 pany?—A. Yes, sir.

Q. Have they dropped the further title of Agents of the Standard Oil Company?—A. They have so far as the soliciting of trade is concerned. They have never taken down their sign from over their door; it is still up there, in very small letters.

Q. Was there a sign over their door?—A. A sign over their office door, "Alabama Oil Company, Agents for Standard Oil Company."

Q. Do their letterheads still have that?—A. No, sir; those that I have seen have not.

Q. As a matter of fact they are no longer agents for the Standard?—A. They are no longer agents for the Standard.

Q. Do you remember ever seeing a letter sent out by the Alabama Oil Company advising its customers that it was agent for the Standard Oil Company?—A. Yes, sir.

Q. Have you a copy of that letter?—A. I have not with me, no; I think I have in my office. It was a printed circular.

Q. A printed circular?—A. Yes, sir.

Q. Of that effect?—A. Yes, sir.

Mr. KELLOGG. That is objected to, and I move to strike it out, because the circular is the best evidence.

Q. Did you have anything to do with the sale of the Alabama Oil outfit by the Standard?—A. The sale of it?

Q. Yes.—A. What do you mean?

Q. When the Standard ceased having anything to do with it.—A. Yes, sir; I was present at the time.

Q. Did you negotiate that sale?—A. No, sir; there was no sale made.

8229 Q. What?—A. There was no sale made. The Standard Oil Company did not own it. Our lease possibly expired. The

agreement as agents for the Standard Oil Company expired, and we did not renew it.

Q. You mean the Standard had only leased the Alabama?—A. I understood so; yes.

Q. And when that lease expired it was not renewed by the Standard?—A. No, sir; it was not renewed.

Q. Do you have traveling salesmen in your employ?—A. Yes, sir.

Q. What do these traveling salesmen do in a general way?—A. They make sales of oil to the retail and wholesale trade.

Q. Travel through your territory?—A. Yes, sir.

Q. That is, in Alabama and partly in Mississippi?—A. And in Mississippi.

Q. And do your competitors also have traveling salesmen?—A. Yes, sir.

Q. This man Wofford testified that when a competitor's traveling salesman would go into the Standard's Birmingham territory the Standard would at once send one of its salesmen out to follow him up, with authority to cut prices, if necessary, to prevent the competitor's salesman from getting the business. What do you know about that during the time you have been connected with the Standard, since, say, 1903, January?—A. The salesmen under my control have their regular territories that they travel over and solicit business. They usually start in on one line and work around until they get over their territory, and commence again, regardless of competitors' salesmen.

8230 They don't particularly follow his salesmen. They may be on the same train with him. But they have no authority to cut prices. They have instructions to secure all the business that they possibly can at the prices that are given to them from my office.

Q. Is it a practice prevailing there to have your salesmen follow up the salesmen of competitors?—A. No, sir.

Q. Or attempt to be on their track while they are out in the field?—A. No, sir. If their tracks should happen to cross, of course I can't prevent that and neither can my salesmen. But quite often our salesmen would be on the same train with the competitor's salesmen. They don't know where the competitor's salesman is going to.

Q. Did you ever send any man out from Birmingham, during the five years that you have been in charge—any traveling salesman—for the purpose of following up the salesman or agent of any competitor?—A. I never did, sir.

Q. Or did you ever send out a traveling salesman with any authority to cut prices, if necessary, in order to get business away from a competitor?—A. No, sir.

Q. Was any such authority ever given to a salesman?—A. No, sir.

Q. Do you yourself, Mr. Pauley, have any authority to cut prices?—A. I have not.

Q. Or to authorize any of your subagents to cut the price?—A. No, sir; I have no authority myself or to authorize my subagents or salesmen to cut prices.

Q. Is there much competition down there?—A. Yes, sir; considerable.

Q. And it is an active fighting competition, isn't it?—A. Yes, sir.

Q. Each of you is fighting to get all the business you can?—A. Yes, sir.

8231 Q. This same man Wofford testified that your office at Birmingham obtained information of competitive shipments from railway employes whom you would hire, and, having thus obtained the information of competitors' shipments, you would secure the business of the competitor by cutting prices and by having the orders countermanded. What have you got to say about that?—A. I have never secured any information as to competitive shipments from a railroad employe, or authorized it to be done by any of the employes under my jurisdiction.

Q. And that has been uniformly true since 1903 in your territory?—A. Since 1903; yes, sir.

Q. And do you know of any such information having been obtained from railroad employes in your territory since 1903?—A. I do not know of any information.

Q. Have you ever given any instructions to your salesmen under those circumstances not to attempt to have a competitive order countermanded?—A. Yes, sir, numerous instructions to that effect; that under no circumstances should they ask a customer to countermand his order that he had given to a competitor.

Q. Your experience is that a salesman is tempted to do that in order to increase his own business?—A. I think so; yes. We are very particular to instruct them not to do it.

Q. How are your salesmen paid—by salary, or commission?—A. Salary.

Q. And how many traveling salesmen have you in your territory?—A. Seven, I think.

Q. And are they kept going pretty much all the time throughout the territory?—A. Yes, sir.

8232 Q. Ten or twelve months in the year?—A. Twelve months in the year.

Q. Do you know a concern known as the Southeastern Oil Company?—A. Yes, sir. I did know of them.

Q. Were they in business in your territory?—A. Yes, sir.

Q. When?—A. They commenced business in February, 1903.

Q. Do you know who it was that organized and started that concern?—A. Yes, sir.

Q. Please tell us.—A. G. T. Wofford.

Q. This same Wofford that I have been talking about?—A. Yes, sir. W. H. Faulkner, O. E. Smith, and Haskins Williams.

Q. Were they all Birmingham people?—A. Yes, sir.

Q. And where did the Southeastern Oil Company begin to do business?—A. In Birmingham.

Q. And what was the character of the business done by that company?—A. General oil business, consisting of lubricating, refined, barrel, and tank wagon business, and gasolines.

Q. Do you remember when they began business?—A. Yes, sir.

Q. When?—A. February, 1903.

Q. That was a month after you started with the Standard Oil Company?—A. Yes, sir.

Q. Now, Mr. Wofford testified, at Washington, when he was on the stand, that after the Southeastern Oil Company started in Birmingham, in February, 1903, the Standard's tank wagon price was cut from 14 to 11 cents. What have you to say about that, Mr. Pauley?—A. It was not cut from 14 to 11 cents.

Q. Will you please give us the facts concerning any cut of prices there in so far as the Southeastern Oil Company is concerned?—
8233 A. There was no reduction made in prices on account of the Southeastern Oil Company being in Birmingham.

Q. Did the Standard cut its price after the Southeastern started in business?—A. We made a reduction, in April, 1903, from 14 to 13 cents.

Q. Why?—A. I was instructed to do it by my superiors.

Q. And was that reduction general throughout your entire territory?—A. It was throughout my entire territory.

Q. Did the Southeastern compete with you throughout your entire territory?—A. No, sir.

Q. Where did it compete with you?—A. Within a radius of 75 miles of Birmingham.

Q. The cut from 14 to 13 cents not only included that territory within a radius of 75 miles of Birmingham, but it took in all of Alabama and part of Mississippi, did it?—A. Yes, sir.

Q. And that was a general cut throughout the territory, made under instructions from headquarters?—A. Yes, sir.

Q. I mean a general reduction in price, rather than a general cut.—A. A general reduction in price in my territory.

Q. And do you know what the relation was between that reduction in price and the price of crude oil at that particular time?—A. I do not, except that I was told that it was due to——

Mr. KELLOGG. Don't testify to what you were told.

Q. Isn't it true that the price of crude came down about a cent at that time?—A. I couldn't say, because I am not posted on crude prices.

Q. You learned that in the course of your business?—A. I learned that in the course of my business, that the price of crude had come down.

Mr. KELLOGG. That is objected to as incompetent.

8234 Q. And what oil is it that is handled down there—the Lima oil?—A. We get it from different sections of the country.

Q. Was that reduction in price, from 14 to 13 cents, or any other reduction that you made in your territory, a reduction that was initiated by your superior officers at Cincinnati, or did it come about

because of any request made by you for a reduction in order to enable you to compete with the Southeastern?—A. It came as a general instruction from the Cincinnati office at that time.

Q. And without regard to anything that you had said or done?—A. Yes, sir; without regard.

Q. Did the Standard afterwards purchase the Southeastern Oil Company?—A. Yes, sir.

Q. Did you have anything to do with that purchase?—A. Yes, sir; I was present.

Q. Do you know who financed the Southeastern company?—A. Yes, sir.

Q. Who?—A. O. E. Smith and Haskins Williams.

Q. And by whom were the advances first made in connection with that sale—by the Standard or by the Southeastern?—A. By Mr. Williams, of the Southeastern, to me.

Q. Now, what did he have to say to you in that regard?—A. He told me that he wanted to sell his oil business; that he was not making any money, and wished to sell it out, and wanted to know if I would take the question up with my headquarters and see if they would not purchase it.

Q. What did you say?—A. I told him that I would.

Q. Did you do so?—A. I did, sir.

Q. Was it subsequently purchased?—A. Yes, sir.

8235 Q. On that first offer of his?—A. No, sir.

Q. In making that purchase, what was the basis of it?—A. We purchased their equipment, consisting of storage tanks, animals, tank wagons, and so forth, by placing a reasonable value upon them. We also purchased the stock of oils that they had on hand by placing a reasonable value on the stock of oils.

Q. Did you pay more than the market price?—A. We did not.

Q. Paid a fair price for that which you purchased?—A. Yes, sir.

Q. What became of the Southeastern—closed up?—A. We closed them up; yes, sir.

Q. You never ran that as the Southeastern?—A. No, sir.

Q. Do you remember when the G. T. Wofford Oil Company started at Birmingham?—A. Yes, sir.

Q. When was it—in 1905?—A. I think so.

Q. Mr. Wofford testified that when that company was started at Birmingham, in 1905, the Standard cut the tank-wagon price of oil from 11 cents to 9½ cents. What do you say as to that?—A. We did not make any cut at that time from 11 to 9½ cents.

Q. Do you remember the 1905 prices at Birmingham?—A. I have a memorandum of them here.

Q. There were some reductions in price, were there not?—A. Yes, sir. January the 1st the tank-wagon price was 13 cents; January 25th it was changed to 12½ cents; February 9th it was changed to 11½, and continued at that price throughout the year 1905.

Q. So that there was never a cut of from 11 to 9½ cents for the purpose of meeting the Wofford competition?—A. There was not.

8236 Q. These reductions from 13 to 12½, and from 12½ to 11½ were due to what?—A. I was instructed to make those reductions, as we generally always do in the spring and summer months, due to falling off in gallonage and a reduction in the price of crude oil.

Q. And those instructions came from where? Covington?—A. From the Covington office.

Q. Did they have any relation whatever to the Wofford competition?—A. They did not.

Q. Were they reductions made because of any request made by you in that connection?—A. No, sir.

Q. Did you ever ask the main office at Covington to authorize a reduction because of the competition of the G. T. Wofford Oil Company anywhere in your territory?—A. Yes, sir. When the G. T. Wofford Oil Company were selling at a price below ours, I have asked permission to meet that price in order to regain business which they had taken away from us.

Q. Without getting that permission from Covington, you yourself would have no authority to make that reduction?—A. No, sir.

Q. Did you ever instruct or authorize any employee of yours to follow the tank wagons of the Wofford Oil Company?—A. No, sir.

Q. Do you know of anything of that kind ever having been done?—A. I do not.

Q. By any of your employees?—A. I do not, sir.

Q. Did you ever authorize an employee of yours, of the Standard, to purchase any information from a drayman or driver of the G. T. Wofford Oil Company?—A. I did not.

Q. Was anything of that kind done, so far as you know?—A. Not to my knowledge.

8237 Q. If it had been done by anyone connected with your office, you would have known it, would you not?—A. I would have known of it, yes.

Q. No money could have been paid out for anything of that kind without your approving it?—A. Without my approval.

Q. That is so, is it not?—A. That is so.

Q. And that was not done?—A. And that was not done.

Q. It was so testified to by Wofford. What do you say as to that?—A. I say that it was never done by my knowledge or by my approval. I do not think it was ever done by any employes of the Standrad Oil Company at Birmingham.

Q. Did you ever receive any fake reports or reports that it was alleged came from draymen showing what Wofford's business was?—A. No, sir.

Q. No report of that kind ever came to you?—A. No, sir.

Q. Did you ever authorize or employ anyone to follow Wofford's tank-wagon drivers on bicycles?—A. No, sir.

Q. If anything of that kind was done, you don't know anything about it?—A. No, sir.

Q. You never requested that it should be done?—A. No, sir.

Q. Or knew of its being done, or paid anybody for doing it?—A. No, sir.

Q. Is that right?—A. That is right.

Q. This same man Wofford testified that the Standard prices in towns outside of Birmingham were higher than the prices at Birmingham, but only just enough higher to keep Birmingham competitors from selling in those outside towns. What have you to say about that statement, Mr. Pauley?—A. Our prices in towns adjacent
8238 to Birmingham are, in every case, higher than the Birmingham price, due to the L. C. L. freight rate on oils that are shipped from Birmingham.

Q. What do you mean by that?—A. Well, for instance, our price in Birmingham——

Q. What do you mean by "L. C. L.," less than carload lots?—A. Less than carload lots, yes.

Q. Just explain that more fully, will you, please?—A. As an illustration, where the price in Birmingham was 12 cents a gallon and at Bungtown, 15 miles from Birmingham, the freight rate would be 50 cents a barrel. Our price then at that town would be 13 cents a gallon if the shipment was made from Birmingham. That is, we also have adjacent to Birmingham smaller stations where oil is delivered from these stations by tank wagon, and we are enabled in these towns, possibly, to name a price that would be so low that we could not ship out of Birmingham and pay the L. C. L. rate in barrels and compete with it. That is the advantage of having these bulk stations at the smaller towns and our reasons for installing them.

Q. That is to say, as I understand it, in some of the towns in and around Birmingham the oil is shipped in less than carload lots from Birmingham at a freight cost of 50 cents a barrel?—A. As an illustration, yes.

Q. As an illustration. Making a difference, in so far as those towns are concerned, of a cent a gallon between their price and the Birmingham price, freight alone being considered?—A. Yes, sir.

Q. Now, are there any other elements besides freight alone that you consider in the making of a price in these smaller towns?—A.
8239 Not where the shipment is made from Birmingham, but in towns such as Bessemer or Pratt City, where we have bulk stations located and operate our tank wagons we receive the oil at those stations direct from the refinery in tank-car lots, and we are enabled to name a very low price for the delivery of oil at these points, consistent, of course, with our cost of marketing at these points, which, of course, in all cases is higher than at Birmingham on account of the smaller amount of gallonage, the condition of the roads, and the scattered customers.

Q. That is to say, there are a great many towns within your territory, contiguous to Birmingham, where your company has tank stations and where the oil comes direct from the refinery to those stations, and those towns are able to sell at a price which, while not as

low as the Birmingham price, is yet less than the Birmingham price plus the cost of freight from Birmingham to those towns?—A. You are correct, sir.

Q. That is what you mean by that explanation?—A. Yes, sir.

Q. Now, under such circumstances, why is not the price in those towns, supplied in that way, direct from the refinery, the same as at Birmingham?—A. Because it costs us more money to deliver this oil in those smaller towns than it does in Birmingham. The gallonage is smaller. We don't deliver as much oil.

Q. Notwithstanding the fact that the freight charges might be just the same there are other elements that enter into the price?—A. Yes, sir.

Q. And gallonage, for example, is one?—A. Gallonage is one.

8240 Q. Cost of delivery?—A. Cost of delivery.

Q. In its relation to gallonage?—A. In its relation to gallonage. And the scattered condition of the towns, of course, which costs us more money to deliver the oil than it would in the city of Birmingham.

Q. You spoke of a town in your territory called Bessemer. Mr. Wofford testified that you kept your price there a little higher than at Birmingham, but not high enough to enable him to ship his oil from Birmingham to Bessemer and compete with you at Bessemer. What have you to say about that?—A. Well, that may be. I don't know what his prices are or what he could do. Our price at Bessemer is higher than at Birmingham, due to the reasons that I have just given you.

Q. He mentioned a margin of difference of 2½ cents. Do you know what the cost would be to ship the oil from Birmingham to Bessemer?—A. If I remember correctly, the freight rate is 10 cents a hundred from Birmingham to Bessemer, L. C. L. That would be 40 cents a barrel.

Q. Or less than a cent a gallon?—A. Yes, sir.

Q. The Wofford Oil Company is not your principal competitor in Birmingham, is it?—A. No, sir.

Q. What is your principal competitor there?—A. The Gulf Refining Company.

Q. About what proportion of the business in the Birmingham territory does the Gulf Refining Company do?—A. I couldn't say, but I should judge between 10 and 30 per cent. I have no means of knowing what they do.

Q. Do you know anything about Wofford's method of secur-

8241 ing business and his general style of competition?—A. His usual method of securing business is by abusing the Standard Oil Company, and creating a prejudice against the Standard. That is his usual argument, at least those that I have heard. And he also cuts prices occasionally, secures some business in that manner.

Q. What about the gauge of his barrels?—A. I have seen quite a number of barrels bearing his stencil that would not hold the number

of gallons of oil that they were gauged at or marked on the end of the barrel.

Q. What advantage is that to the Wofford Company in the sale of its oil?—A. If a barrel is over-gauged from 1 to 5 gallons, the customer pays for that quantity of oil which he does not receive. That would enable the Wofford Oil Company to sell their oil at a less price than if they gauged full measure to their customers.

Q. Or to sell at the same price and make more profit?—A. Yes, sir.

Q. How extensively has that practice been engaged in by the Wofford Oil Company of over-gauging its barrels?—A. Quite extensively, I should think, as I have seen a number of them.

Q. How do you happen to know that; how do you come in possession of that information?—A. A great many of his customers sell their empty barrels to me. We buy all classes of oil barrels, have an open market on them. Quite often their customers will send their barrels in to us and we will pay them the market price for them, and in that manner I have an opportunity of seeing the barrels and measuring them myself.

8242 Q. And you use those empty barrels which you thus purchase?—A. Yes, sir.

Q. And before using them, do you regauge them?—A. Yes, indeed; we regauge them, repaint them.

Q. Repaint them?—A. Put our name on and our gauge.

Q. Now, why do you regauge them if they already show a stencil by the Wofford Company?—A. Because we want to know ourselves what the gauge of the barrels is. We are not selling our oil according to the Wofford Company's gauge.

Q. And, having regauged a great many of their barrels in that way, you have found that they are undergauged?—A. Yes, sir. Overgauged.

Q. Overgauged I should say. Has that been true during all the years you have been in business there?—A. Well, the Wofford Oil Company have not been in business during all the years that I have been there.

Q. Well, during the years that the Wofford Company has been in business?—A. I think so.

Q. Do you know whether the Southeastern had any practice in that regard, of overgauging barrels?—A. Yes, I think they had. When we purchased the Southeastern's business, Mr. Wofford and myself took the inventory of the oils that were on hand. If I remember correctly there were about 70 barrels of black oil in wood barrels, and when we came to take the gauges on the ends of the barrels I questioned the gauges. I had been in the oil business for a number of years and I knew that the barrels could not contain the amount of oil that was stenciled on the end of the barrels.

8243 When I questioned it, Mr. Williams who was then present, informed me that each of those barrels was five gallons overgauged, and we took the inventory on that basis.

Q. Now, that was the concern that Wofford and Williams and somebody else were connected with?—A. Wofford, Williams, Smith, and Faulkner.

Q. And what reason, if any, did Mr. Williams give for that overgauging?—A. I asked him his reason. He stated that this was the only means by which they could——

Mr. KELLOGG. Objected to as incompetent. Go ahead.

WITNESS. That they could make a profit and secure business.

Q. Mr. Wofford testified that it was the practice of the Standard Oil Company to cut prices throughout that territory in competition with the Wofford Oil Company. That you have denied. Now, what do you say as to the practice of Wofford with respect to cutting prices?—A. In some cases the Wofford Oil Company have cut the prices that we were naming and have secured the business from us.

Q. Can you give any cases where you know personally that that has been done?—A. They secured the business of the Tennessee Coal, Iron & Railway Company on lubricating oils at prices less than what we were selling them for. I was told this by the purchasing agent and shown invoices of the Wofford Oil Company to the Tennessee Coal, Iron & Railway Company to this effect.

Q. That was a contract that ran about $5,000 a month; didn't it?—A. Yes, sir.

8244 Q. A very large contract?—A. A very large piece of business.

Q. In lubricating oils? Did you subsequently get that business away from the Wofford Oil Company?—A. I did.

Q. Under what circumstances?—A. The Tennessee Coal, Iron & Railway Company made a practical demonstration of our oils in their different plants that continued for several months, and proved to themselves beyond any doubt that our oils were superior to those that they were purchasing from the Wofford Oil Company, and as a consequence they gave us the business.

Q. Do you know of any other cuts made by Wofford?—A. Yes, sir. About four or five months ago the Wofford Oil Company cut our tank-wagon price on refined oil to the Woodward Iron Company, located at Woodward, and as a consequence we lost the business and are not now enjoying it. The Wofford is still securing it.

Q. Do you know how much of a cut Wofford made in that case?—A. I am not positive, but I was told that——

Mr. KELLOGG. Do you know, yourself?

WITNESS. I do not know, except what I am informed by the customer, that it was 2 cents a gallon.

Q. Now, we spoke a while ago of the Gulf Refining Company, and you expressed the opinion that they did from 10 to 30 per cent of the refined-oil business in your territory.—A. In Birmingham.

Q. Where are their headquarters?—A. The headquarters, as I understand it, are in Pittsburg, Pennsylvania.

Q. And they do an extensive business throughout the Middle South, do they not?—A. Yes, sir.

8245 Q. Do you know the concern of Barton & Allen?—A. At Alexander City?

Q. Yes, sir.—A. Yes, sir; I know them.

Q. What is their business?—A. General merchandising business.

Q. Where is Alexander City?—A. 86 miles southeast of Birmingham, on the Central of Georgia Railroad.

Q. Is it in Alabama?—A. Yes, sir.

Q. And therefore in your territory?—A. Yes, sir.

Q. Did you ever do any business with Barton & Allen there?—A. Yes, sir.

Q. Much business?—A. Well, considerable; yes; because they are one of the largest merchants in the town.

Q. What do you mean by a "drum" of oil?—A. We consider a "drum" as an iron or steel package containing 110 gallons or thereabouts. Some people consider an iron or steel package that contains 50 or 55 gallons as a drum.

Q. The essential difference between a barrel and a drum is that the drum is an iron or steel package?—A. Well, there are iron and steel barrels. We consider a 55-gallon iron or steel barrel as an iron barrel. We don't call it a drum.

Q. You mean by "we" the Standard Oil Company?—A. The Standard Oil Company.

Q. Do you know G. R. Nutty, the general sales manager of the Gulf Refining Company?—A. I do not know him personally.

Q. Do you know his signature?—A. I have seen his signature on a few occasions.

Q. Under what circumstances?—A. I have seen his signature attached to contracts of the Gulf Refining Company made with merchants.

8246 Q. You have learned, have you, in the course of your business, that he is the general sales manager of the Gulf Refining Company?—A. I have so understood, sir.

Q. And have seen a great many contracts signed, or purporting to be signed, by G. R. Nutty?—A. Some of them; yes, sir.

Q. Now when was the business, at Alexander City, of Barton & Allen, taken away from you?—A. I do not remember the date that it was taken away from us.

Q. Was it about January, 1906?—A. I couldn't say, but I think it was about that time.

Q. And who got the business at that time?—A. The Gulf Refining Company.

Q. Do you know how they got it?—A. They made a contract with Barton & Allen, agreeing to sell them oil in iron drums at 1 cent per gallon below the tank wagon price.

Q. What tank wagon was there in Alexander City at that time?—A. The Standard Oil Company was the one.

Q. Any other?—A. No, sir.

Q. So, when the tank wagon price in Alexander City was mentioned in January, 1906, that could only refer to the Standard Oil

tank wagon price?—A. I should think so, because there were no other tank wagons operating.

Q. I show you a contract between the Gulf Refining Company and Barton & Allen, dated January 18, 1906. Please state whether you have ever seen that before.—A. I have, sir.

Q. When and where the first time?—A. I saw it in the possession of Barton & Allen some time in 1907.

Q. Do you know in whose handwriting the body of that contract is?—A. I do, sir.

8247 Q. Whose?—A. W. D. Simms.

Q. Who was W. D. Simms?—A. He was a salesman for the Gulf Refining Company.

Q. How long had you known him?—A. For about five years.

Q. Had he ever been in the employ of the Standard?—A. He was.

Q. And did you thus become familiar with his handwriting?—A. I did.

Q. Is that his handwriting?—A. It is.

Q. And he was then a salesman for the Gulf Refining Company?—A. Yes, sir.

Q. Now, you got that contract from Barton & Allen in the year 1907, did you?—A. Yes, sir.

Q. Under what circumstances?—A. I asked them if they had such a contract, and they said that they had, that the contract had expired; and I asked them if they would give it to me, and they said they would. And he referred me to a package of papers hanging on the wall, and asked me to look through it to see if I could find it. I looked through the bundle of papers, found the contract, showed it to him, and again asked his permission to take it, and he granted it, handing me the contract.

Q. And that contract which you have before you is the one that you got under those circumstances?—A. It is.

Q. And in that way?—A. It is, sir.

Mr. ROSENTHAL. I offer it in evidence.

The same reads as follows:

8248 "Form No. 9.

This contract made and entered into this the 18th of January, 1906, between Gulf Refining Company, of Louisiana, first party, and Barton & Allen, of Alexander City, Ala., second party.

Witnesseth, that first party sells and agrees to deliver to second party and the second party agrees to purchase and receive from first party.

Article, kerosene (Lusterlite) for use on sale at their store, Alexander City, Ala.

Quantity, maximum, thirty-five drums. Minimum, twenty drums.

Price, one cent per gallon below Alex. City T. W. price.

Delivery, in drums (loaned) in lots of not less than one drum.

Time, between January 18, 1906, and January 18, 1907. Five days' written notice to be given representative of the first party at Montgomery, Ala., before kerosene is required to be shipped.

Payment, payment shall be 30 days, and in case second party shall fail to pay any draft drawn by first party for bills due, first party may, if it so elect, cancel and terminate this contract.

Condition, in case of strike, fire, failure of vessel service as public or private carriers, or any unavoidable act of God or providential cause happening to either party to this contract, the suffering
8249 party may, at its or their option, suspend terms and conditions of this contract for a reasonable period, and no liability for damages shall attach against either party on account thereof.

This kerosene is to be suitable for illuminating purposes and to give satisfaction when used in lamps. This contract to be signed in triplicate by both parties hereto and become effective only when approved by the general sales manager of first party; and when so approved one copy will be forwarded promptly to second party.

Witness the signature of first and second party this eighteenth day of January, 1906.

GULF REFINING COMPANY OF LOUISIANA.
O. RAUCHFUSS.
BARTON & ALLEN.

Attest:
Approved:

G. R. NUTTY,
Gen. Sales Mgr.

Q. Now, the Gulf Refining Company was your principal competitor out of that territory, was it not?—A. Yes, sir.

Q. What sort of kerosene is "Lusterlite," which is named in this contract?—A. It is an ordinary grade of kerosene oil, similar to that which is being sold throughout the country for illuminating purposes.

Q. Is it a standard brand sold by the Gulf Refining Company under that trade name?—A. Yes, sir; it is sold universally by them under that name.

8250 Q. The Gulf Refining Company alone sells that oil?—A. They are the only ones that I have ever heard of selling that brand.

Q. Now, 35 drums of oil is a pretty fair order for a small town, isn't it?—A. Yes, sir.

Q. What does this mean which I read from this contract: "Price, one cent per gallon below Alex. City T. W. price?"—A. I would infer that it meant Alexander City tank wagon price.

Q. What does the "one cent per gallon," then, "below Alex. City tank wagon price" mean?—A. It could only mean below the Standard Oil Company's tank wagon price, because that was the only tank wagon operating there.

Q. That means that the Gulf Refining Company entered into a contract, then, with Barton & Allen to sell "Lusterlite" kerosene oil to Barton & Allen for a whole year one cent per gallon below the Standard tank wagon prices, no matter how low those Standard tank

wagon prices might go?—A. That was my understanding of it, and a number of the invoices I saw of the Gulf Refining Company, billing this oil to Barton & Allen, were at the rate of one cent per gallon below the Standard Oil Company tank wagon prices prevailing in Alexander City.

Q. Do you know of other similar contracts that were made by this your principal competitor in your field?—A. Yes, sir; I have seen two more, one made with a man by the name of Walters in Alexander City, another made with Robertson & Sons, Wetumptke, Alabama.

Q. And in the course of your business have other similar
8251 contracts been reported to you from other points.

Mr. KELLOGG. That is objected to as incompetent. The contract is the best evidence.

Mr. ROSENTHAL. I will agree not to put it in if you will agree to strike out all that character of testimony that you put in.

Mr. KELLOGG. Go ahead.

A. They have; about 40 by my salesman.

Q. So that about 40 contracts like this, where the Gulf Refining Company has contracted to sell its oil at a cent a gallon under the Standard prices, have been reported to you by different salesmen of yours through different parts of you territory?—A. Yes, sir.

Q. And what do you say as to whether you lost any of those customers?—A. I lost all of them.

Q. You know that you have lost those 40 customers?—A. I know that we have lost their business and did not sell them.

Q. So that you have, first, the report made to you by your salesmen of the existence of a contract similar to this, which we will concede may be hearsay, and you have, secondly, the fact that you lost the customers' business; is that right?—A. That is right.

Q. Well, with respect to this general subject of cutting prices, Mr. Pauley, have you ever cut prices in your territory simply to get business away from your competitor, the cut being initiated by you?—A.

No, sir; not to my knowledge. Of course, I don't always know
8252 of the competitor's prices, but I never intentionally cut the price in order to secure the business from the competitor.

Q. And what is your practice in so far as relying upon reports of competitors' competitive price cutting?—A. I secure a great many reports from my salesmen of different prices being named by the competitor. My instructions to them at all times are to report as to whether they saw the quotation from the competitor, or an invoice, or whether it was hearsay. As a usual case the salesman doesn't report hearsay. When he is informed by a customer that he is buying his oil for less money, he usually, in a polite manner, asks to see the invoice or quotation of that kind.

Q. So, what you try to do at all times is to get authentic information of an alleged cut made by your competitor?—A. Yes, sir.

Q. And those have been your instructions, as I understand, since you have been manager at Birmingham?—A. Yes, sir.

Q. And what do you say as to whether those are the instructions which you receive from your superior officers at Covington?—A. Those are the instructions that I receive from Mr. Collings at Covington, who insists upon authentic information as to cuts in prices being made by competitors.

Q. So that, as I understand your testimony in that respect, you never request that a reduction should be made in price by you until you have what you regard as authentic information that a cut has been made by a competitor?—A. I have satisfied myself that the information is correct and the price has been cut by the competitor before I request a similar reduction in order to meet it.

Q. And, without making such request, you haven't any right
8253 to meet it in the first instance, anyway?—A. I have no authority to meet it.

Cross-examination by Mr. KELLOGG.

Q. Mr. Pauley, how long have you been in the oil business?—A. Ten years.

Q. When did you commence work for the Standard?—A. Ten years ago.

Q. You have been in their employ ever since?—A. Yes, sir.

Q. Where did you go from to Birmingham?—A. Indianapolis, Ind.

Q. How big a territory have you got?—A. Practically all of Alabama and part of Mississippi.

Q. You went with the Standard to Birmingham in February, 1903?—A. No, sir.

Q. What time?—A. In January, 1903.

Q. Mr. Wofford was in charge there before you went, wasn't he?—A. No, sir.

Q. He was working for the Standard?—A. Working for the Standard, but not in charge.

Q. What was his position?—A. I was told that he was chief clerk.

Q. He was in their employ a long time—a number of years?

Mr. ROSENTHAL. Have you any personal knowledge of that?

WITNESS. I have no personal knowledge of it.

Q. Well, you know he had been there, don't you?—A. I was told he was.

Q. You know he was there as well as you do many things you have testified to?—A. I never saw him there.

Q. You have testified to a great many things you haven't
8254 seen.—A. I have so stated when I have testified.

Q. That was your understanding?—A. That was my understanding.

Q. You don't know anything about what the Alabama Oil Company did before you went there?—A. No, sir.

Q. Did you look up the lease?—A. I didn't have the lease.

Q. You said they leased it.—A. I was told that they leased it.

Q. You were told when they leased it, weren't you?—A. No; I wasn't told.

Q. Then, how did you know it was leased?—A. My predecessor informed me that they were under a lease.

Q. For how many years?—A. He said five years.

Q. How long after you went there was the lease cancelled?—A. I should think about two years; I don't remember correctly.

Q. Now, during part of that two years the Alabama Oil Company was doing business under that name, not as agents of the Standard Oil, weren't they?—A. Part of the time they were doing business; yes.

Q. How much of that two years?—A. I should judge about one year; I can't say as to when.

Q. Isn't it a fact that it was in 1905 that it commenced and put up the name of agents for Standard Oil?—A. I don't remember the date.

Q. You don't remember the date?—A. I don't remember the exact date, but I think it was.

Q. You think it was in 1905?—A. Yes; the early part of 1905.

Q. Wasn't it the latter part of 1905?—A. It may have been; I couldn't say.

8255 Q. You don't know the time exactly?—A. No.

Q. I will refresh your memory. It was after the Department of Commerce and Labor commenced the investigation down there, wasn't it?—A. I don't know.

Q. You remember that, don't you?—A. I don't know when they commenced it.

Q. You remember the investigation, don't you?—A. I read about it; yes, sir.

Q. You were in Alabama at that time, weren't you?—A. Yes.

Q. And knew there was an agent of the Department of Commerce and Labor down there at that time?—A. I was told there was.

Q. And it was after that this change was made, wasn't it?—A. I couldn't say.

Q. Now, isn't that your recollection?—A. No; I couldn't say; I don't know; it is not my recollection.

Mr. ROSENTHAL. The Department can't get any credit for that.

Q. Then they put the name of agent on, did they?—A. They did at one time put the name "Agents for the Standard Oil Company."

Q. Well, that is the time you are referring to now, isn't it?—A. I don't know what time you are referring to.

Q. I am referring to the time some time in the latter part of 1905.—A. Some time along that time.

Q. They put on the name "Agents for the Standard Oil Company?"—A. Yes, sir.

Q. Over the door of the office?—A. Yes, sir.

Q. Where they were doing business?—A. Yes, sir.

Q. Prior to that time they didn't have that name?—A. No, sir.

8256 Q. What did they do that for?—A. I couldn't tell you. I don't know.

Q. You were informed, weren't you?—A. I saw it.

Q. You were informed why they did it, weren't you?—A. No.

Q. Don't you know that about the time this investigation was going on by the Department of Commerce and Labor the Standard abandoned all their secret companies?—A. I don't know that.

Q. Well, you heard it, didn't you?—A. I read it in the paper.

Q. Didn't you hear it from your men?—A. No, sir.

Q. You know Mr. Westcott, don't you?—A. Yes.

Q. You know of him?—A. Yes.

Q. You know he testified to it, don't you?—A. I don't know. I never saw his testimony.

Q. You never have?—A. No, sir.

Q. Then prior to that time the Alabama Oil Company was run as an independent, was it?—A. So far as I know it was.

Q. Well, you were there and know, don't you?—A. Yes, sir.

Q. It was held out as an independent to the trade, wasn't it?—A. It was so considered. Some of the trade said that it belonged to the Standard and some said it was an independent.

Q. But the people who were running the Alabama denied that it belonged to the Standard, didn't they?—A. I think so.

Q. As a matter of fact, it was leased by the Standard during that time, wasn't it?—A. I was told that it was.

Q. Now, who made those statements to the trade?—A. To the trade?

8257 Q. Yes.—A. What statements?

Q. The statement you have just told about—that it was not owned by the Standard?—A. The representatives of the Alabama Oil Company.

Q. Who were they?—A. Well, John W. Davis is one of them, Charles G. Davis another, and they have salesmen occasionally in their employ.

Q. Now, they were men that were working for the standard Oil Company?—A. I suppose they were if they were leased to the Standard.

Q. And they lied about it, didn't they, to the trade?—A. I don't know about that.

Q. Well, that is all you would call it, isn't it?—A. I expect it would be.

Q. Yes; that is what I thought. Now, who directed the name to be changed after that—I mean the sign to be changed, so as to bear the name of "Agents for the Standard Oil?"—A. I don't know, sir.

Q. You didn't?—A. No, sir.

Q. Who was your superior officer?—A. I have several of them. Mr. Collings is the man that I report to.

Q. Now, you were present when that was sold afterward, or the lease given up, transferred?—A. Yes, sir.

Q. Whom was it sold it?—A. The lease expired.

Q. Well, the lease expired.—A. And we took the oil off their hands and their accounts. I personally did that.

Q. You personally did it?—A. Yes, sir.

Q. Then who got the charter?—A. I never saw any charter.

8258 Q. Well, who took the company, the organization?—A. The Alabama Oil Company?

Q. Yes.—A. The Alabama Oil Company.

Q. Yes, I know, but I mean what persons?—A. Charles G. Davis and John W. Davis.

Q. Since then they have been running it, haven't they?—A. Yes.

Q. Since that time as an independent?—A. Yes, sir.

Q. About when was that that they took it over—1906 or 1907?—A. 1905 you said.

Q. The last of 1905?—A. Yes. I don't remember.

Q. It was considerably later than that, wasn't it?—A. Well, I thought it was, too. Yes; it was later than that. That was when the name was changed, about a year afterwards.

Q. About a year after that that they took it over?—A. Yes; about a year.

Q. So it was nearly 1907, or about that time?—A. July, I think, was the month. I think it was 1906, but I won't be positive.

Q. Now, since that time they have bought their oil of the Standard Oil Company, haven't they?—A. Some of it.

Q. Most of it, haven't they?—A. I couldn't say, because I don't know how much business they do.

Q. Well, you know they have bought oil of the Standard Oil Company since then?—A. I sell it to them myself.

Q. How much do you sell them?—A. Tank car occasionally.

Q. That is about what they use, isn't it—a tank car occasionally?—A. No, sir; they use more than a tank car occasionally.

Q. Do you know of their buying of anybody else except the

8259 Standard or some of the Standard companies?—A. I have seen the Gulf Refining Company's tank cars on their side track and I inferred that they bought from the Gulf Refining Company.

Q. Well, we will come to the Gulf Refining Company. Do you know what caused the general change throughout that territory, the change from using these secret companies?

Mr. ROSENTHAL. I object to that. He hasn't testified that there was any such general change or that he knows anything about it. Your question assumes that he does.

Mr. KELLOGG. Well, I will find out.

Q. What other companies were there in your territory that the Standard controlled that were operated as independents?—A. None that I know of.

Q. You don't know of any others? You didn't have Georgia in your territory?—A. No, sir.

Q. Any of Mississippi, did you say?—A. Yes, some.

Q. How much?—A. Oh, well, about three or four hundred towns, I suppose; I don't know just how much.

Q. Now, you say you didn't send your traveling agents to follow up the traveling agents of the independents; you didn't give them any such directions?—A. No, sir.

Q. You don't know that they didn't do it, do you?—A. I don't know that they didn't do it; no. I don't have any personal knowledge of their actions.

Q. Now, where was the head office of your territory?—A. Birmingham.

Q. No, I mean the Standard Oil Company of Kentucky's head office?—A. Covington, Kentucky.

8260 Q. And your superior officer lived at Covington, had his office there?—A. Yes, sir.

Q. Now, your salesmen received notices and information direct from the head office, didn't they?—A. No, sir.

Q. Never?—A. Not to my knowledge.

Q. Mr. Collings and no one in his employ at Cincinnati or Covington ever wired your salesmen information direct—your traveling salesmen?—A. Not that I know of. They wouldn't know where they were.

Q. You kept track of where they were?—A. Yes, sir.

Q. You wired them, didn't you?—A. Yes, wired them every day or two.

Q. Now, don't you recollect wiring them information as to where the independent salesmen were?—A. I don't recall of ever doing it.

Q. Well, you did do it, didn't you?—A. Not that I remember of.

Q. No recollection of ever wiring one of your salesmen?—A. Not that I remember of, sir.

Q. Or furnishing them any information at all about the business of the competitors?—A. Of course I would tell them I had heard a competitor had sold some oil in a town and to go there and see if we had lost that business.

Q. Yes, sir. Now, you got those reports, didn't you, about the business of competitors?—A. What reports?

Q. Reports as to their business in your territory.—A. From whom.

Q. That is what I am asking you.—A. I don't know what

8261 reports you refer to.

Q. How did you find out that a competitor?—A. Once in a while an agent would write me and say that a salesman representing a competitive oil concern had come into his territory and had taken some business away from him.

Q. Then you would wire your agent?—A. I would write him or wire him if he was near there to go over and see what he could do, see the reason for our losing the business.

Q. Now, didn't you get reports from the head office at Covington of shipments made into your territory?—A. I have had such reports.

Q. Yes, sir. A good many times, haven't you?—A. Not very many.

Q. About places where independent oil was shipped?—A. Yes, sir.

Q. Then, when you would get that information, you would wire your sales agent, wouldn't you?—A. No, I would write him; no necessity of wiring him.

Q. You did wire him sometimes, didn't you?—A. No, I don't think I ever did.

Q. You would write him?—A. Write him.

Q. And tell him that certain oil of independents had been shipped into the territory?—A. Yes, sir.

Q. Now, you had a system among your sales agents, among your salesmen and local agents, of reporting independent oil shipped into the territory, didn't you?—A. Any that they would see; yes, sir.

Q. Were those reports made to you?—A. Yes, sir.

Q. And you sent them to what place?—A. I kept them in my office.

8262 Q. Didn't you send them to Cincinnati?—A. What is the use of sending them there?

Q. I haven't asked you what is the use. I ask you if you did.—A. No, not to my knowledge.

Q. Did the Cincinnati office get reports of the independent sales in the various parts of your territory?—A. I don't know.

Q. You don't know anything about that?—A. No, sir.

Q. They kept them away from you, did they?

Mr. ROSENTHAL. Wait a moment. I object to that. The question is whether he knew about it.

WITNESS. I didn't know anything about it.

Q. Don't you know that the central office at Covington and Cincinnati, when it was there, had a system of reports from every local agent in your territory?

Mr. ROSENTHAL. I object to it. You have asked him the question and he has already answered that he didn't.

Mr. KELLOGG. Well, he will answer it again.

WITNESS. I do not know.

Q. You do not know it? You never heard of that, did you?—A. No, sir.

Q. Never heard any such thing?—A. No, sir.

Q. That they had a system of reports of the independents shipping into your territory?—A. I read it in the paper.

Q. Never heard of it except that?—A. No, sir.

Q. You know Mr. Westcott, don't you?—A. Yes, sir.

Q. He has general charge of the Standard of Kentucky, hasn't he?—A. I don't know. He is vice-president of the Standard of Kentucky.

8263 Mr. ROSENTHAL. He was.

WITNESS. He was.

Q. Office at 26 Broadway, New York?—A. He was, I understand.

Q. Now, who has charge of the various local agents selling oil in your territory?—A. I do.

Q. And you never heard that they made any report about the sale of independent oil in your territory to anybody?—A. Made them to me.

Q. They made them to you? How often did you get those reports?—A. No regular time for receiving them.

Q. Whenever the oil came into the territory?—A. Whenever they would see it.

Q. They had instructions to keep track of it, hadn't they?—A. All of my men have instructions to keep their eyes open; if they see any competitive oil to let me know of it.

Q. Those reports were sent in to you in writing, weren't they?—A. Yes, sir.

Q. Every time they found any oil?—A. I don't know about that.

Q. You got them very often, didn't you?—A. I received reports.

Q. From whom did you get those reports?—A. I don't know.

Q. You don't know?—A. They were not particular reports; sometimes in the form of a letter, and sometimes——

Q. You had blanks to report on, too, hadn't you?—A. At one time; yes.

8264 Q. At what time did you have those blanks?—A. It has been three or four years ago, possibly.

Q. You quit using blanks about the beginning of 1906, didn't you?—A. I don't know when. I don't know when we did quit using them. I didn't like the blanks and threw them away. Didn't have any instructions to discontinue them.

Q. Oh, you didn't?—A. No, sir.

Q. Prior to 1905 you used blanks, didn't you?—A. Not always, no.

Q. Not always?—A. No.

Q. Well, you used them a good deal in your territory, didn't you?—A. Some.

Q. Those blanks had various headings for various information, didn't they?—A. Yes, sir.

Q. Describe them to me, please.—A. It was a small blank that gave the name of the man reporting it and gave the name of the customer that had purchased oil or received oil.

Q. The consignee?—A. The consignee, and, when they knew it, whom the oil was from, and the kind of oil, whether refined or lubricating.

Q. It had a column for the consignee and for the consignor, hadn't it?—A. Yes, sir.

Q. It had a column for car numbers?—A. No, no.

Q. Never any column for car numbers in any report that you had in your territory?—A. I don't remember of ever seeing one.

Q. You don't remember of ever seeing one?—A. Where a car number was given.

8265 Q. Well, you have the number of cars or the number of barrels, the heading?—A. The number of barrels; yes.

Q. You never saw a form with the car number?—A. Not that I remember of.

Q. Some of these reports which you got had the car numbers, hadn't they?—A. No, sir; I don't remember of ever receiving any reports of a full carload.

Q. Well——A. Yes, I will take that back. I have, too. I don't remember the car number. I don't care particularly about the car number.

Q. You had the consignee and the consignor?—A. Yes, sir.

Q. And the amount of oil; if it was a carload that was given, or if a number of barrels, that was given?—A. Yes, sir.

Q. And when received?—A. Yes, sir.

Q. And the name of the place at which received?—A. Yes, sir.

Q. What else?—A. The man's name that purchased the oil.

Q. The name of the consignee?—A. And the company selling the oil.

Q. And the company selling the oil. So that if the National Refinery shipped any oil to John Jones in your territory, that report would show National Refining Company and the place of shipment, wouldn't it?—A. Yes, sir.

Q. And the name of the consignee, John Jones, if that was the name, and his place of residence?—A. Yes, sir.

Q. And the number of barrels of oil?—A. Yes, sir.

Q. Or a carload, if given?—A. Yes, sir.

8266 Q. And where a carload, the car number was given, wasn't it?—A. I don't remember of ever seeing the car number.

Q. And the date of shipment or the date of receipt?—A. Yes.

Q. And those reports were sent to your office, were they, by the local agent in each town?—A. Yes, sir.

Q. Did you issue any instructions about their getting these reports?—A. I think I did.

Q. What were those instructions?—A. That wherever they knew of customers being taken away from us, receiving oil through other companies, to report it on that form.

Q. Wherever they found any oil shipped into your territory they were to report it, weren't they?—A. Yes, sir.

Q. Make any difference whether it was customers taken away from you or not?—A. Yes, sir.

Q. All oil shipped in?—A. Yes, sir.

Q. And all oil sold in your territory was to be reported, wasn't it?—A. Yes, sir.

Q. You furnished those reports to the Cincinnati office, didn't you?—A. I had no occasion to.

Q. Well, you did do it, didn't you?—A. Not that report.

Q. You made up one from that?—A. Yes, sir.

Q. And sent that to the Cincinnati office?—A. Yes, sir.

Q. Now, what did your report, that you made up, show?—A. It showed that quantity of oil had been reported as being sold.

Q. And the name of the consignor?—A. Yes, sir. Similar information.

8267 Q. The same information that was on your report?—A. Similar to it.

Q. How often did you send that to the office at Cincinnati?—A. Whenever we had enough to fill out a report we sent it.

Q. You frequently wrote your agents to be on the lookout for shipments, didn't you?—A. Not in those terms.

Q. You prodded them up to get them, urged them to be sure and get all shipments into your territory?—A. No, sir; I did not write them often to that effect.

Q. You did occasionally, didn't you?—A. I possibly did once or twice during the five years that I have had charge; and not to all the agents—to some of them.

Q. To some of them. When they would get lax, you would——A. Not particularly; just as the thought occurred to me.

Q. Did you write any such letters as that?—A. I have written to agents to report to me any oil that was being sold, any trade being taken away from us.

Q. When you got this information about shipments of independents into your territory, you would notify the local agent, would you, to look after it?—A. Yes, sir.

Q. To go and see if he could get that trade back again?—A. Yes, sir.

Q. And whenever the Cincinnati office notified you of any shipments made into your territory from outside the territory, you notified your traveling salesman and local agent, didn't you, of it?—A. Yes.

8268 Q. Whenever an independent traveling man went into your territory, you or your traveling men got notice of that fact, didn't you?—A. No, sir.

Q. Never?—A. Not unless one of my agents would see him.

Q. Didn't Mr. Collings notify you sometimes?—A. Never did.

Q. Never did?—A. No, sir.

Q. Didn't he notify your traveling men?—A. No, sir.

Q. Or special agents?—A. I was the only special agent there.

Q. Did you know R. N. Reed?—A. Yes, sir.

Q. Who was he?—A. He was at one time in the employ of the Standard Oil Company.

Q. Where?—A. At different places; one time at Atlanta, Georgia.

Q. You know Mr. Collings' signature, don't you?—A. I think so; yes.

Q. You got lots of letters from him, didn't you?—A. Yes, sir.

Q. Who was "F. B.," who signed his name?—A. Frank Barline, I think.

Q. He was employed by Mr. Collings?—A. Yes, sir

Q. In his office?—A. Yes, sir.

Q. Here is a letter in evidence signed "C. T. Collings, F. B.;" here is the original letter written January 21, 1904, to Mr. R. N. Reed, S. A., Atlanta, Georgia.

"DEAR SIR: I received late yesterday afternoon your telegram in regard to the Red C Oil Co. representative being at Union, S. C., trying to make up a carload of oil at 15 cents per gallon in barrels delivered. I immediately wired you to lower all of your
8269 South Carolina points one-half cent per gallon on refined oil; and I presume you will have a refined oil salesman on the ground to follow this Red C man around and prevent his making up any more carloads. There certainly must be something wrong about this price."

Mr. ROSENTHAL. What is the question to this man about that letter?

Q. Then he goes on and talks about the price and then adds this: "I am anxious to know whether or not you succeeded in getting your salesman on the track of this man, in reference to his movements to other points, and whether or not the reduction I have recommended will satisfy the trade." Now, do you say that it was Mr. Collings' custom not to direct the men to do that?

Mr. ROSENTHAL. Wait a moment. I object to that question upon the ground that so much of it as is a question has not any relation, and so much of it is a statement of the examiner. There is not any relation whatever between the reading of that letter and the question which Mr. Kellogg has asked.

Q. Please answer the question.

Mr. ROSENTHAL. That is, answer the question if you can.

The following portion of the question was read: "Now, do you say that it was Mr. Collings' custom not to direct the men to do that?"

WITNESS. To do what?

Q. To follow the independent salesmen.—A. I don't recall of ever receiving any instructions from him either way on it.

8270 Q. Didn't you say a while ago that you never gave any such instructions?—A. I don't recall of ever giving any such instructions.

Q. Or receiving any such instructions?—A. I don't recall of ever receiving any such instructions.

Q. Do you know that you didn't get such instructions from Mr. Collings?

Mr. ROSENTHAL. I object to that. He has just answered he can't recall any. Now, a man can't do more than that.—A. I don't recall it if I did.

Q. I think you testified a little while ago that Mr. Collings didn't give instructions to lower prices when independents were selling oil in your territory.—A. I don't think I made that statement.

Q. He did give such instructions, didn't he?—A. To cut prices below the competitors?

Q. Yes, sir.—A. I have never received such instructions.

Q. Have you ever worked in any other territory than in Birmingham?—A. Yes, sir.

Q. Where?—A. Indianapolis, Indiana; Peoria, Illinois; Cincinnati, Ohio.

Q. I show you this letter, Petitioner's Exhibit 680, purporting to be signed "C. T. Collings, F. B." Are you familiar with that signature?—A. I don't recall the particular handwriting.

Q. You don't recall that?—A. No. I may have seen it before, but——

Q. You know "F. B.?"—A. I have seen him, yes. I have
8271 seen Frank Barline; I don't know whether that is the name.

Q. Was it customary for him to sign letters for Mr. C. T. Collings?—A. It was, I think.

Q. You have seen many such letters, haven't you?—A. I have. But I don't remember whether it is the same signature as that.

Q. When were you in the Indiana and Illinois territory?—A. Prior to January, 1903.

Q. For how long?—A. I was for about five years.

Q. What was your position?—A. Salesman.

Q. Traveling salesman?—A. Yes, sir.

Q. For the Standard of Kentucky?—A. Yes, sir.

Q. It used to have that territory, didn't it?—A. Yes, sir. I understood so.

Q. It does not have it not?—A. I don't know.

Q. Did your territory cover Peoria?—A. No, sir; it was outside of Peoria.

Q. Did it cover Decatur and Springfield?—A. No, sir.

Q. Outside of that?—A. Yes, sir.

Q. The country around those places?—A. The western part, Galesburg.

Q. You never received any letters from Mr. Collings requesting you to have your men follow the independent salesmen?

Mr. ROSENTHAL. I object. He has already answered that he didn't, repeatedly answered it.

A. I have no recollection of receiving any such letters.

Q. You never gave any such directions to your salesmen?—A. No, sir.

8272 Q. Verbally or in writing?—A. No, sir. Except that I would tell them where a salesman had been reported, where he had made some sales, for him to go there and protect our interest, to see why we lost our business.

Q. Who was D. P. Sanford?—A. D. P. Sanford?

Q. Yes.—A. He is an employe of the Standard Oil Company.

Q. Special agent?—A. No; he hasn't that title.

Q. Where is his office?—A. Covington, Kentucky.

Q. In the general office?—A. Yes, sir.

Q. What was his position in the years 1899 and 1900?—A. I didn't know him at that time.

Q. What is his position now?—A. He works under the general manager in office work.

Q. Now, you say you bought out the Southeastern Oil Company.—A. The Standard Oil Company bought them out.

Q. That is what I mean. The Southeastern Oil Company was organized by Mr. Williams, Mr. Smith, and Mr. Wofford, wasn't it?—A. And Mr. Faulkner.

Q. And Mr. Faulkner. About what time?—A. February, 1903, is when they commenced to sell oil.

Q. They did business until what time?—A. Sometime in 1904.

Q. 1904, when you bought them out?—A. Yes, sir.

Q. You had your deal with Mr. Williams, did you?—A. Yes, sir.

Q. Mr. Williams and Mr. Smith furnished the money, didn't they, for that thing?—A. I understood that they did; in fact, they told me.

8273 Q. And they said they hadn't made any money?—A. That is what they said.

Q. And they wanted to get out of it?—A. That is what he told me.

Q. Now, you say that some of their barrels were undergauged or overgauged. What do you mean?—A. I mean that some of their barrels showed on the end of them that the contents of the barrel were more in gallons than what the barrel would actually hold.

Q. Wofford or the Southeastern Oil Company didn't manufacture those barrels, did they?—A. No, sir.

Q. They bought them, didn't they?—A. Yes, sir.

Q. Of standard manufacturers?—A. I don't know when they bought them.

Q. There are companies that manufacture such things, aren't there?—A. Yes.

Q. Standard manufacturers?—A. Yes, large cooperage concerns that manufacture these barrels. Some of them are manufactured for whiskey and some of them for oil, and the gauges vary.

Q. You say you had experience enough in the oil business to know that some barrels might be overgauged?—A. Yes, sir.

Q. How many barrels of theirs did you measure?—A. At that particular time?

Q. Any time.—A. Of the Southeastern Oil Company?

Q. Yes, sir.—A. Or of the Wofford Oil Company?

Q. Either one.—A. I couldn't say how many.

Q. Not a great many, did you?—A. Possibly fifty.

Q. Do any of the Standard's barrels ever get overgauged?—

8274 A. None that I have ever seen.

Q. You have never seen them?—A. No, sir.

Q. You don't know that they don't?—A. I don't know that they don't, but our instructions to the men who gauge those barrels are to stencil the exact contents of the barrel and not to overgauge the barrel. For instance, if a barrel would gauge 51 gallons, it would be stenciled and sold as 50 gallons.

Q. You do not know that some of their barrels were not overgauged?—A. No, sir.

Q. You didn't measure them to see?—A. No, sir.

Q. You don't know that these men did that to defraud their customers?—A. I don't know it.

Q. You don't know that the customers didn't know how much oil they bought exactly, do you?—A. I don't know.

Q. Now, I want to ask you some questions about this Gulf Refining Company. Where are they situated?—A. They are situated about over the entire South, from what I know; they have different locations.

Q. Oh, you know what I mean. Where is their head office?—A. As I understand, in Pittsburg, Pennsylvania.

Q. Where is their refinery?—A. I hear that it is at Port Arthur, Texas.

Q. You know that it is, don't you?—A. I believe it is; yes. I have never seen it.

Q. Oh, no; but you know that is where they get their oil from?—A. Yes.

8275 Q. They ship it by water, don't they?—A. I don't know about that.

Q. How did they ship it to Alexander City?—A. They shipped it by rail. There is not any water going in there.

Q. Where did they land? Where did it come from, what port?—A. From Montgomery, I think.

Q. From Montgomery, Alabama?—A. Yes; in barrels.

Q. Now, you say you got your oil in your territory from various refineries?—A. Yes, sir.

Q. You get most of it from Whiting, Indiana, don't you?—A. Yes, sir.

Q. Substantially all of it, don't you?—A. Not now.

Q. Well, you did at that time—1903?—A. Yes, sir.

Q. When did you commence getting it from Texas?—A. I couldn't say; I don't remember the date.

Q. About when?—A. 1905, I think.

Q. Prior to that time you got substantially all of your oil from Whiting?—A. Practically all of the refined oil.

Q. That is what I mean.—A. Yes, sir.

Q. And about 1905—was it the latter part of 1905?—A. I don't know.

Q. Or 1906?—A. I couldn't say whether it was the latter part. It may have been in 1904. I don't remember.

Q. Well, 1905 is near enough.—A. Yes.

Q. You commenced to get some oil from Texas, didn't you?—A. Yes, sir.

Q. That is a cheaper grade of oil, isn't it?—A. I don't know.

8276 Q. You don't know about that. Don't you know that the Texas oil is sold from 1 to 2 and 3 cents less than the Whiting oil?—A. I don't know.

Q. You don't know that?—A. No, sir.

Q. Don't you know it is a cheaper grade?—A. I don't.

Q. Didn't you people sell it as Whiting oil?—A. No, sir; never.

Q. Did you inform your customers that it was Whiting oil?—A. No, sir.

Q. And never told them where you got it?—A. No, sir.

Q. Did you get it from the Corsicana Refining Company?—A. No, sir.

Q. Where do you get it from?—A. We don't get any from Texas.

Q. You don't get any from Texas?—A. Not getting any oil from Texas that I know of.

Q. Where do you get it?—A. I get some oil from Wood River, Illinois; some from Port Chalmette, Louisiana.

Q. That is the same as the Texas oil, isn't it?—A. I don't know.

Q. You don't know about that. Don't you get it from the Corsicana Refining Company?—A. Get it from the Standard Oil Company, Port Chalmette.

Q. Port Chalmette?—A. Yes, sir.

Q. Have they got a refinery there?—A. Not that I know of.

Q. That is a port, is it?—A. I understand so; I have never seen it.

8277 Q. What company ships you that oil?—A. I don't know.

Q. Do you know the Security Oil Company?—A. I have heard of them.

Q. Did you ever get any oil from them?—A. Yes, sir.

Q. Part of this oil came from the Security Oil Company, did it?—A. What oil?

Q. That you have been selling in your territory lately?—A. Not lately. Some time ago it came from the Security Oil Company. I don't know how long ago.

Q. How long ago?—A. Some time in 1905.

Q. When did this Illinois field open?—A. I think I commenced to get the first oil in the early part of this year.

Q. That comes from Whiting, doesn't it?—A. Wood River, Illinois.

Q. Is there a refinery there?—A. I understand there is.

Q. Standard Oil refinery?—A. I think that is the name.

Q. That you commenced to get the first of this year?—A. I think so.

Q. Prior to that time, you either got it from Whiting or from Texas, didn't you?—A. No; from Whiting or from Port Chalmette.

Q. Well, the oil that came from Port Chalmette came from Texas, didn't it?—A. I don't know where it comes from.

Q. You know there is no refinery at Port Chalmette, don't you?—you, or the Security Oil Company?—A. I don't know; I never heard of the Corsicana Oil Company.

Q. Some other Standard Oil officials said they never heard
8278 of it, but they did after a while. You never heard of the Corsicana Oil Company?—A. I don't think I ever did.

Q. You know there is no refinery at Port Chalmette, don't you?—A. I don't think there is one there. I have never been at the Port.

Q. Where did you imagine that oil came from?—A. It may have come from the East, down by water.

Q. You don't think it did, do you?—A. I shouldn't be surprised; I don't know. I would just as soon think it did.

Q. Now, didn't you mix the Whiting oil with the oil that you got from Port Chalmette?—A. Yes, sir.

Q. And sold it in your territory?—A. Yes, sir.

Q. And the oil you got from Port Chalmette was a cheaper oil than the Whiting oil, wasn't it?—A. I don't know what it cost.

Q. It was a cheaper grade of oil, wasn't it?—A. I don't know what they paid for it; I didn't buy it.

Q. The oil of the Gulf Refining Company—that it sells in your territory—all comes from Texas, doesn't it?—A. I understand that it does.

Q. You know that is a cheaper grade of oil than the Whiting oil, isn't it?—A. I don't know that it is. I don't know anything about the relative cost of it.

Q. It is a lower test, isn't it?—A. I don't know what you mean by "test."

Q. You don't know what I mean by test?—A. There are several different ways of testing.

8279 Q. Well, what about the gravity—is it a lower gravity or higher, or what?—A. Than the Whiting oil?

Q. Yes.—A. At one time it was.

Q. Was what?—A. Was of a lower gravity than the Whiting oil.

Q. And made it a cheaper oil?—A. And sometimes higher.

Q. It is usually lower, isn't it?—A. It isn't now.

Q. The Whiting oil is made partly out of Indian Territory oils, isn't it?—A. I don't know.

Q. Do you know what the flash test of the Texas oil was?—A. Some that I tested; yes.

Q. What was it, as compared with the Whiting?—A. I don't recall what the Whiting was. I have tested some Texas oil—Gulf Refining Company oil (on hearsay it was Texas oil; I don't know)—which was 112, and some that was 130, open cup.

Q. What is your Whiting oil?—A. I have tested some that was 120 and some that was 150.

Q. What is it generally?—A. Well, that depends generally upon the grade that you want, I suppose.

Q. Generally speaking, what is it?—A. From 120 to 150.

Q. So that the Whiting oil has a higher test than that from Texas?—A. I have seen oil that was alleged to come from Texas that would test 155, open cup.

Q. Yes, you have seen some I have no doubt; but don't you know that, generally speaking, Texas oil is a cheaper oil than the Whiting oil has been in the years past?—A. I don't know anything about it, sir.

Q. You don't know anything about it?—A. No, sir.

8280 Q. Then, you don't know that the price of the Gulf Refining Company, as compared with your price, was about the same?—A. I don't know that. In a great many cases it was lower than ours.

Q. Yes, but it was a cheaper oil, wasn't it?—A. I don't know that it was.

Q. Do you get any oil from the Gulf Refining Company?—A. No, sir.

Q. This firm, Barton & Allen, which the Gulf Refining Company got away from you at one cent less than the tank-wagon delivery, you got back again, didn't you?—A. Yes, sir.

Q. How did you get it?—A. We solicited their business. When the contract expired, they commenced to purchase oil from us.

Q. Did you make a reduced price to them?—A. I don't know whether we had made any reductions during that time or not. I don't recall that we had. We did not offer them any particular reduction for the business.

Q. Well, you did reduce the price and get the——A. I don't know whether we reduced the price or not; I don't remember.

Q You don't know how you got it back?—A. Asked for it and got it.

Q. Oh, yes; but they were not in the habit of giving you anything just because you asked for it, were they?—A. Well, I don't think they had anything particular against us.

8281 Q. No. Nevertheless, if they could buy oil cheaper from somebody else, they would naturally do it, wouldn't they?—A. Yes. I should think so, anyhow.

Q. You gave them some consideration in getting the business?—A. We didn't offer them any, didn't give them any. It may be that the market of the National Refining Company and ourselves was the same when we regained the business. I don't remember.

Q. Did you have an understanding with the National Refining Company as to the market price?—A. No, sir.

Q. They don't compete much with you, do they?—A. They don't compete?

Q. Yes.—A. They get all the business they can, and so do I.

Q. Well, that is a small amount, isn't it?—A. I don't know. To hear them tell it, it is considerable.

Q. Now, you don't know what their percentage of business is, do you?—A. I have no idea. I have no means of knowing.

Q. When you said from 10 to 30 per cent, that is a mere guess, isn't it?—A. A mere guess.

(The hearing was here adjourned until the morning of Friday, September 4, 1908, at 10.30.)

8282 ROOM 515, CUSTOM-HOUSE, NEW YORK CITY,
Friday, Sept. 4, 1908, 10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present on behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison, and Mr. J. Harwood Graves.

On behalf of the defendants, Mr. Moritz Rosenthal, Mr. F. L. Crawford, Mr. Douglas Campbell, and Mr. W. Cleveland Runyon.

ELBERT H. PAULEY recalled, and cross-examination resumed, as follows:

By Mr. KELLOGG:

Mr. Pauley, you, as special agent, know nothing about the price of oils; is that true?—A. Our price of oil?

Q. Yes; the prices of different oils in the country.—A. I know all about the selling price in my territory; yes, sir.

Q. Don't you know about the prices of different grades of oil in your teritory?—A. That I sell; yes, sir.

Q. Don't you keep track of the prices of Texas oil, too?—A. When I sold Texas oil. We sold it as oil.

Q. Don't you know that Texas oil is an inferior grade of oil to the Whiting oil and to the Pennsylvania oil?—A. I do not know.

Q. It is or is it not?—A. I do not know, sir.

Q. And you have been ten years in the employ of the Standard Oil Company and don't know anything about that?—

8283 A. I have been ten years in their employ. I have seen some inferior Texas oil and some inferior Ohio-Indiana and Pennsylvania oils.

Q. But, generally speaking, the price of the Texas oil runs from 1 to 3 cents a gallon less than the other, doesn't it?—A. I have never heard so.

Q. You don't know anything about it?—A. No, sir.

Q. When the lease of the Alabama Oil Company was given, who continued to run the company?—A. Run the Alabama Oil Company?

Q. Yes.—A. John W. Davis and Charles G. Davis.

Q. The same men who ran it before?—A. Yes, sir.

Q. The same men who ran it during the time the Standard had it leased?—A. Yes, sir.

Q. And they continue to run it yet, do they?—A. Yes, sir.

Q. And they are buying oil from your company?—A. Some from us.

Q. Isn't it a fact that one of those Davises has been in your employ in other places than Alabama since that time?—A. Not in my employ.

Q. Well, of the Standard Oil Company?—A. Yes, sir.

Q. One of them was sent up to Indianapolis, wasn't he?—A. Yes, sir.

Q. And was employed by the company there?—A. Yes, sir.

Q. And then they sent him back down in the southern territory?—A. I think so.

Q. Sent him to New Orleans, didn't they?—A. Yes, sir.

Q. So he has not been running the Alabama Oil Company

8284 all the time?—A. No; his father.

Q. His name has been connected with it, hasen't it?—A. I don't know about whose names are connected with it. I just see those people and they say they are running the Alabama Oil Company.

Q. But one of those men that are running the Alabama Oil Company has been in the employ and in the payment of the Standard Oil Company?—A. He was at one time, I think.

Q. Is he yet?—A. Not that I know of.

Q. Do you know whether he is or not?—A. I know that he isn't under the Birmingham management or receives any pay from the Birmingham.

Q. He wasn't under the Birmingham management when he was up in Indianapolis, was he?—A. No, sir.

Q. Or New Orleans?—A. No, sir.

Q. He is still in their employ in this place, isn't he, or one of them?—A. Not to my knowledge. I don't believe he is.

Q. Is he back in Alabama?—A. Yes, sir.

Q. He is in Birmingham now?—A. He has been for sometime.

Q. Is the Standard Oil Company of Kentucky paying this man a salary for running that company now?—A. I don't know.

Q. You don't know that they are not?—A. I don't know, because I don't run the Standard Oil Company of Kentucky.

Q. So that you don't know that the Alabama Oil Company is an independent company to-day, do you?—A. I have every reason to believe that they are, because I sell them oil and compete with other oil companies.

8285 Q. You and the Gulf concern sell them all their oil, don't you, practically?—A. I don't know who the Gulf concern is.

Q. Well, the Texas Oil Company,—A. I don't know a concern by that name.

Q. You don't know that name? Didn't you testify yesterday they bought some oil of the Texas Oil Company?—A. I did not.

Q. Whom did you say they did buy it of?—A. I said I had seen Gulf Refining Company tank cars on their side track and they informed me that they had purchased some oil from the Gulf Refining Company.

Q. Now, their prices, which they are selling at, in Birmingham, are the same as your prices, aren't they?—A. I don't think they sell any refined oil in Birmingham.

Q. Where do they sell it?—In the surrounding country, in barrels.

Q. Their price is the same as yours, isn't it?—A. Sometimes it is and sometimes it is not. I have heard of places where they were selling it for less than ours and places where they were selling at higher prices.

Q. Selling to your customers?—A. People we had sold at one time.

Q. Yes, but you had lost them soon after that?—A. Yes.

Q. They don't sell any to your customers, do they?—A. Yes, they sell to our customers.

Q. Do they now sell to the customers of the Standard Oil Company?—A. Yes, sir; we have customers we will sell a barrel to

8286 and they will buy a barrel from the Alabama Oil Company and possibly from the Gulf Refining Company.

Q. They still carry the name "Agents of Standard Oil Company" over their door?—A. The last time I drove past their office the little sign was on there.

Q. Do you believe, if they were entirely independent, they would be advertising themselves as agents of the Standard Oil now?—A. I don't know their object in it.

Q. What do you think about it?—A. I asked the man why he had not taken the sign down and he said that he hadn't had time.

Q. How long ago was that?—A. Three or four months ago.

Q. How long after they started was it that you asked him?—A. I don't recall.

Q. Two or three years, wasn't it?—A. I suppose so.

Q. During that two or three years they have not had time to take the sign down?—A. That is what he said.

Q. Did you believe it?—A. Well, that is a question. I should believe the man, yes, when he said so.

Q. As a matter of fact, they are not an independent company—isn't that true?—A. As a matter of fact, in my opinion they are an independent company.

Q. Is the Standard Oil that popular down there that it improves their business to advertise themselves as agents of the Standard Oil Company?—A. Well, I think the Standard Oil Company is rather popular in my country.

Q. You think it is?—A. Yes.

Q. Do you know a man by the name of G. A. Stein?—A. Yes, sir; I did know a man by that name.

Q. Who was he?—A. When I knew him he was assistant
8287 treasurer of the Standard Oil Company of Kentucky.

Q. Is he yet?—A. No, sir.

Q. How long ago did he leave them?—A. I couldn't say; I don't remember.

Q. Did you ever know of a concern called the Vincennes Oil Company?—A. I did not know them.

Q. Did you ever hear of them?—A. I have.

Q. They were doing business in your territory, were they not?—A. Not in the Birmingham territory.

Q. No; I mean when you were in Indiana.—A. No, sir.

Q. Weren't they doing business at Vincennes?—A. That wasn't my territory.

Q. Were you ever in that territory?—A. I have been in Vincennes once.

Q. How did you happen to hear of the Vincennes Oil Company?—A. I don't recall now how I heard of them.

Q. Who was running it?—A. I do not know.

Q. Did you ever hear of a man by the name of Neits running it?—A. No, sir.

Q. Never heard of that?—A. No, sir.

Q. You didn't know that Mr. Neits was Mr. Stein, who spelled his name backward to cover it up, do you?—A. No, sir.

Q. You never heard of that?—A. No, sir.

Q. Now, you stated yesterday, as I understood you, that you never cut prices to get business, and that you received such instructions from Mr. Collings.

Mr. CRAWFORD. He didn't say that.

A. I don't remember of saying that, Mr. Kellogg.

8288 Q. Well, is that true or isn't it?—A. I do not cut prices, knowingly, to secure business. I have never received any instructions from Mr. Collings to cut prices to secure business.

Q. What do you cut prices for?—A. I do not know that I do cut prices.

Q. You never have cut prices in your territory?—A. Not knowingly.

Q. Well, would you do it without knowing it?—A. Possibly I would not know what the competitor's price was when naming my price.

Q. No, to reduce your prices below the competitor?—A. I wouldn't do it.

Q. You never have done it?—A. I have no recollection of doing it.

Q. You never received any instructions from Mr. Collings in any instance, ever, to cut prices to get business?—A. Not to my knowledge, sir.

Q. Well, have you, or have you not?—A. I can't remember of ever receiving any. I do not think that I ever have.

Q. Have you got your correspondence with Mr. Collings?—A. Some of it and some I have not. I have none with me.

Q. Where do you keep it?—A. Correspondence with Mr. Collings is kept in my office when we do keep it.

Q. At Birmingham?—A. Yes, sir.

Q. Don't you keep it?—A. If it is important correspondence we do.

8289 Q. Have you got the correspondence during the years 1903 and 1904 in your office?—A. I don't know whether I have or not, sir.

Q. Isn't it customary to keep it?—A. Keep some of it if it is important. If it is unimportant we destroy it. We couldn't possibly keep all of our files, we haven't the room.

Q. Did you ever receive a letter from Mr. Collings or from anyone who signed his name directing or authorizing you to reduce prices in your territory for the purpose of getting business away from a competitor?—A. I do not remember of ever receiving any such letter from Mr. Collings.

Q. Did you ever receive any verbal instructions to that effect from Mr. Collings?—A. I have not.

Q. Then, your district is an exception from the other districts, is it?—A. I have never heard so.

Q. You know that Mr. Collings wrote such letters into other districts, don't you?—A. I do not know it.

Q. I showed you one letter yesterday which you said was written by a man whom you recognized, authorized by Mr. Collings.—A. I don't believe that I stated that I recognized the signature, did I?

Q. Oh, you didn't recognize it. You stated the man's initials that were at the bottom of Mr. Collings' signature, didn't you?—A. I stated there was a man in the employ of Mr. Collings that had such initials.

Q. You never have received any such letters as that or of that kind?—A. Not that I recall, sir.

Q. Will you produce your correspondence in 1903 and 1904?

8290 Mr. CRAWFORD. Mr. Kellogg, if you want to make a requisition for any correspondence, you had better let us have the requisition.

Mr. KELLOGG. He is a witness.

Mr. CRAWFORD. This witness is not under supœna duces tecum.

Mr. KELLOGG. It doesn't make any difference; he is on the stand.

Mr. CRAWFORD. It makes a great deal of difference.

Q. Will you produce the correspondence that he sent you?

Mr. CRAWFORD. The witness isn't under cross-examination for that purpose.

Q. Do you decline to answer that question?

Mr. CRAWFORD. It is for the counsel to decide whether he will produce the correspondence or not.

Mr. KELLOGG. We will see about that. Do you decline to answer that question?

The EXAMINER. Make some kind of an answer.

WITNESS. I can furnish you with the correspondence that I have.

Q. Will you do it?—A. I will if I am compelled to.

Q. You will if you are compelled to? That is, if any court compels you to?—A. Yes.

Q. You won't unless you are?—A. I do not see the necessity of it.

Q. Then, you will not produce it unless you are compelled to do it by the court?—A. I will not produce it unless I am requested by the court to produce it.

8291 Q. Unless you are compelled to, or requested?—A. Requested.

Q. By what court?—A. By this court, or any other court, for that matter. I obey the courts in all instances.

Mr. KELLOGG. I ask the examiner to request you to produce your correspondence with Mr. Collings during the years 1903 and 1904.

Mr. CRAWFORD. I submit to the examiner——

The EXAMINER. Do you want me to issue a subpœna duces tecum?

Mr. KELLOGG. No; I want you to request him to do it.

Mr. CRAWFORD. I submit to the examiner that that is not the way to get papers into court.

Mr. KELLOGG. We will see about that. I would like to have you (the examiner) request the witness to bring his correspondence into court.

The EXAMINER. I don't think I have power to compel a witness to do so.

Mr. KELLOGG. I know you haven't any power.

The EXAMINER. I am not disposed to make any order that I can't enforce.

Q. You refuse to bring the correspondence unless some court orders you to, do you?—A. Yes.

Q. All right. Now, you did receive letters from Mr. C. T. Collings, didn't you?—A. Yes, sir.

Q. During all of that time?—A. Yes, sir.

Q. In relation to the sale of oil and the handling of business in your territory?—A. Yes, sir.

8292 Q. Signed by Mr. C. T. Collings?—A. His name was signed to them.

Q. Either by him or by some authorized agent?—A. Yes, sir.

Q. And you did answer that correspondence?—A. Yes, sir.

Q. And did that correspondence pertain in some instances to the business of independents doing business in your territory?—A. Yes, sir.

Q. And did that correspondence pertain to your agents going into territory where you knew independents were selling oil?—A. I don't recall that it particularly——

Q. Well, did it at all pertain to that?—A. I can't say.

Q. You don't know?—A. Not having the correspondence before me.

Q. Well, will you produce it to see?—A. Not unless I am requested by a court.

Q. You mean compelled to by the court?—A. Requested is equivalent to being compelled, of course; that is the way I construe it.

Q. Do you know Mr. E. B. Stanley?—A. Yes, sir.

Q. Who is he?—A. I believe he is president of the American Laundry Machine Company at present.

Q. Was he ever in the employ of the Standard Oil Company?—A. Yes, sir.

Q. How long?—A. I couldn't say.

Q. Was he in the employ in 1899?—A. Yes, sir.

Q. In what position?—A. I don't recall what position he occupied at that time.

8293 Q. He was in the Cincinnati office, was he?—A. Yes, sir.

Q. Before they moved to Covington?—A. Yes, sir.

Q. When did they move to Covington?—A. I don't remember.

Q. He was there for a number of years, wasn't he?—A. I don't know.

Q. How long was he there, to your knowledge?—A. I do not know.

Q. What was his position when he was there?—A. When I first became connected with the company he was manager of the lubricating department; he afterwards became general manager.

Q. Of all their business?—A. That was his title.

Q. Isn't he still in their employ?—A. No, sir.

Q. Did you know Mr. D. P. Sanford?—A. Yes, sir.

Q. What position did he occupy?—A. I did not know him at that time.

Q. Do you know him now?—A. Yes, sir.

Q. What position does he occupy?—A. He is a clerk in the general manager's office in Covington, Kentucky.

Q. Who is the general manager?—A. Mr. C. H. Hand.

Q. In 1899 what was his business?—A. Whose business?

Q. Mr. D. P. Sanford's.—A. I did not know him at that time.

Q. When did you first know him?—A. I do not remember.

Q. Do you know his signature?—A. No, sir; I don't think that I have ever seen his signature.

Q. Did you know Mr. Alexander McDonald?—A. I have seen the gentleman.

Q. What was his business?—A. When?

8294 Q. When you knew him.—A. I don't know.

Q. Don't you know what his business was?—A. No, sir.

Q. Was he connected with the Standard Oil?—A. I don't know.

Q. You never heard of Mr. McDonald being connected with the Standard Oil?—A. Yes, sir.

Q. When?—A. I have heard that he was at one time connected with the Standard Oil.

Q. How long ago?—A. Several years ago; I don't remember the number of years.

Q. Was he connected with the Standard Oil when you were in Illinois?—A. Not that I know of.

Q. Where did he live?—A. I don't know.

Q. Never heard of it?—A. I don't think I ever heard where he lived.

Q. When did Mr. Stanley leave the employ of the Standard Oil?—A. I don't remember.

Q. Where does he live now?—A. I don't know where he lives.

Q. Where does his concern do business, that he is president of?—A. In Cincinnati, Ohio, I think; at least he so informed me.

Q. How long have you known Mr. Collings?—A. Ten years.

Q. He has been vice-president of the Standard Oil of Kentucky during that time?—A. I don't know whether he was during all that time or not; I don't remember.

Q. Did you ever know a Mr. Kercher?—A. No, sir.

Q. Never heard of him?—A. No, sir.

Q. In selling oil in drums or barrels, is it usually sold cheaper than it is by tank-wagon delivery?—A. Sometimes.

8295 Q. Is it usually?—A. That is what we figure on, that it does not cost as much to sell it in that manner. We did at one time consider that it cost more, but it is about an even break.

Q. You think it is usual that oil in drums and barrels is sold cheaper to the retail trade than it is by tank-wagon delivery?—A. Not always, no, sir.

Q. What is the usual practice?—A. It depends entirely upon your cost of delivery by tank wagons versus your cost of delivery by drums.

Q. They generally figure that oil in barrels and drums must be placed with the retail merchant a little cheaper in order to sell it than oil sold by tank wagon; is that true?—A. I don't think so.

Q. Then, what do you mean by saying that generally it sold cheaper?—A. I afterwards modified that by saying that it was an even break.

Q. Oh, an even break? You changed your mind?—A. Rather so, yes, by your question.

Q. You found out what I wanted, I suppose?—A. No, sir; I did not.

Q. Then, it is a fact, is it, that oil in drums and barrels is usually sold at the same price?—A. Not always. Sometimes there is a variation.

Q. Usually, I said. What is the general?—A. I couldn't say without going over my entire records and seeing how I figured in the past.

8296 Redirect examination by Mr. CRAWFORD:

Q. Mr. Pauley, prior to the expiration of the lease of the Alabama Oil Company, while the lease was in force, where else than on the sign did the Alabama Oil Company advertise the fact that it was the agent of the Standard?—A. On letterheads which I saw, invoices, and by a printed circular which they mailed to a number of people who were purchasers of oil.

Q. Since the lease was cancelled or since it has expired have they claimed to be agents of the Standard upon their letterheads or their invoices?—A. I have never seen anything on their invoices or letterheads since that time, and I made an investigation at one time to see whether those words were on their invoices and letterheads, and found that they were not.

Q. So that the only place where those words are now retained, or were retained at the time you last looked at them, was on the sign?—A. On the sign over their office.

Q. How many of these men by the name of Davis are there?—A. Two in Birmingham connected with the Alabama Oil Company, that I know of.

Q. Of course I mean connected with the Alabama Oil Company.—A. Yes.

Q. What are their names?—A. John W. Davis and Charles G. Davis, his son.

8297 Q. Which of those was it that you referred to when you spoke of one of the Davises being at some time or place in the employ of the Standard?—A. Charles G. Davis.

Q. What is the fact in regard to the other, the father, John Davis? Has he ever since the lease from the Alabama Oil Company was

cancelled been in the employ of the Standard Oil Company anywhere, to your knowledge?—A. Not to my knowledge.

Q. Where has he been during the three or four years since that cancellation took place?—A. In Birmingham.

Q. And what has he been doing there, as far as you know?—A. Operating the Alabama Oil Company.

Q. Continuously?—A. Yes, sir.

Q. Have you dealt with him?—A. I have.

Q. Have you sold him oil?—A. I have, sir.

Q. Now, when you sell oil to him (and when I say "to him" I mean to the Alabama Oil Company), do you bill it as you do to any other customer?—A. Yes, sir.

Q. Charge it on your books?—A. Yes, sir.

Q. Are the bills paid?—A. Yes, sir.

Q. In money?—A. In checks.

Q. And that goes through the regular channel?—A. Through the regular channel in my office.

Q. What other concerns than the Standard do you know of their having bought oil from? You mentioned one, the Gulf Refining Company. Do you know of any other?—A. They informed me that they had purchased oil from the Indian Refining Company. I have seen Indian Refining Company's tank cars on their side-track at times when I would visit the Alabama Oil Company for the purpose of soliciting their business.

8298 The EXAMINER. How large a sign is that that you are speaking of?

WITNESS. The "Alabama Oil Company" is about ten feet long, the name Alabama Oil Company; the words "Agents for Standard Oil Company" are not any larger than your paper here, in a circular form.

Q. You refer to a piece of paper about eight inches long by six inches wide?—A. I do, sir.

Q. Which lies on the table here?—A. I do.

Q. You mean to say that the words "Agents for Standard Oil Company," as they appear on that sign, would be included in a space no larger than that paper?—A. No larger than that paper.

Q. Is that what you mean?—A. Yes, sir, that is what I mean.

Q. You don't know that this Charles G. Hand has been in the employ——

Mr. KELLOGG. Charles G. Davis.

Q. Of the Standard since the lease expired, do you? Did I understand you to say that——A. I did not say that he had been in the employ since the lease expired.

Q. Do you know whether he is or not?—A. I feel confident that he is not.

Mr. KELLOGG. Which one did you say was in the employ?

WITNESS. I did not say that either one was in the employ since the lease expired, or at least I did not intend to convey that impression, Mr. Kellogg.

Mr. KELLOGG. That is what you said, anyhow.

WITNESS. No, I did not say it.

8299 The EXAMINER. I so understood it.

Q. To what time were you referring?—A. To the expiration of this lease. At the time that Charles G. Davis was in Illinois, he asked the question, and later transferred to New Orleans.

Q. Where has Charles G. Davis been, if you know, since the lease expired?—A. Birmingham, Alabama.

Q. Has he been connected with the business, the Alabama Oil Company business?—A. With Davis-Richter Mercantile Company.

Q. You have seen him frequently there, have you?—A. Yes, sir.

Q. Did you ever yourself hear either of the Davises, or any one else connected with the Alabama Oil Company, prior to the assumption of the title of agents, state that they were not connected with the Standard Oil Company?—A. I did not.

Q. Have you any personal knowledge that they ever made any such statements?—A. Only hearsay.

Q. Now, I want to clear up your testimony in regard to the matter of reducing prices. Let me see if I understand that. What do you say on this point: Have you in your territory been in the habit of cutting prices against a competitor before the competitor made a cut?—A. No, sir.

Q. Who is it that in such cases has initiated the cut?—A. The competitor.

Q. And has that always been the case?—A. Always the case, so far as I know.

Q. When a competitor has initiated the cut, in other words, when he has cut below your price (if he has cut below your

8300 price), what have you done in consequence thereof?—A. I have endeavored to obtain authentic information that he had cut such prices, and I took the question up with Mr. Collings, giving him the facts as I knew them, and, in some cases, recommending that we meet the prices.

Q. What do you mean by "meeting the price?"—A. Naming the same price that the competitor does.

Q. That is, reducing your price to the same point?—A. Reducing our price to the same point.

Q. And then?—A. Sometimes I would get authority from Mr. Collings to reduce our prices to the prices being named by the competitors, and sometimes I would be told that we didn't care for the business at any such prices.

Q. When you have been authorized to reduce it, it has been a reduction to the same point as that to which the competitor had previously reduced his price; is that correct?—A. To the best of my knowledge, it was; yes, sir.

Q. At any rate, that was according to the best information you could get upon the point?—A. Yes, sir.

Q. Now, Mr. Kellogg asked you something about the popularity of your company, of the Standard Company, down in your territory.

Tell us something about that. On what terms do you live with your trade and with the public down there?—A. Our company is very well thought of in the South. I consider, by the number of friends I have in Birmingham and throughout my territory, that I am also respected not only on account of my own personality, sir, but
8301 the fact that I represent the Standard Oil Company, although some of our competitors try to abuse the Standard Oil Company and create prejudice against them.

Q. You have a very considerable number of customers through Alabama and Mississippi, haven't you?—A. Quite a number of them.

Q. What are your relations with them?—A. Very pleasant, indeed.

Q. Do you find that they express satisfaction with the service they get?—A. They do.

Q. And with the oil they get?—A. They do. They have expressed themselves not only verbally, but in correspondence, to that effect.

Q. Who preceded you as special agent at Birmingham?—A. Mr. A. J. Mapes.

Q. Is he living now?—A. I understand he is dead.

Q. Now, Mr. Pauley, you testified in regard to measuring or gauging some barrels. First, you spoke of those which came to you from Mr. Wofford's present company and then those which came to you from the Southeastern Company. Taking first those from the Wofford Company, how have you measured them? What have you done to ascertain their capacity?—A. I measured those packages by a regular gauge-rod which is used in gauging barrels for wine measure; I also measured them by a can that we use that contains five gallons of oil—a measuring can. I have then filled the barrels with oil, weighing the empty barrels beforehand and weighing the
8302 barrel and its contents afterwards computing it in refined oil at 6½ pounds to the gallon, and in that manner verifying the different measurements.

Recross-examination by Mr. KELLOGG:

Q. Why was it necessary to run the Alabama Oil Company as a secret company?—A. I don't know.

Q. What did you do it for?—A. I didn't do it.

Q. Why did the Standard do it?—A. I don't know, sir.

Q. Why was it necessary to run the Dixie Oil Company as a secret concern?—A. I don't know anything about the Dixie Oil Company.

Q. Didn't it do business in your territory?—A. Not while I was there.

Mr. KELLOGG. That is all.

WITNESS. You are entirely through with me now, Mr. Kellogg?

Mr. KELLOGG. Not at all. I want you to produce those letters.

8303 Mr. CRAWFORD. I call the attention of the court to section 5154 of the Revised Statutes of Indiana of 1881, and particularly to that part of said section which reads as follows:

"It shall be the duty of every inspector or deputy inspector to keep a true and accurate record of all oils so inspected and branded

by him; which record shall state the date of the inspection, number of barrels, and the name of the person for whom inspected; and such record shall be open to the inspection of any and all persons interested. And every deputy inspector shall, on the first of each and every month, make a true and accurate return to the State inspector of all such inspections for the preceding month, giving the quantity inspected, the date of inspection, and the name of the person for whom it is inspected. On the second Monday in January of each and every year, the State inspector shall make, and deliver to the governor of the State, an annual report of the inspections made by himself and deputies during the preceding calendar year."

8304 C. T. COLLINGS, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. What is your full name?—A. Crittenden Taylor Collings.

Q. Where do you live, Mr. Collings?—A. I live in Cincinnati, Ohio.

Q. How long have you lived there?—A. About ten years.

Q. Where did you live before that?—A. Louisville, Kentucky.

Q. How long there?—A. Oh, I was born and raised there; lived there all my life.

Q. Are you connected with the Standard Oil Company?—A. Yes.

Q. In what position?—A. I am the second vice-president of the Standard Oil Company incorporated in Kentucky.

Q. How long have you been second vice-president of that company?—A. Since 1900.

Q. For ten years, you say, you have been located at Cincinnati?—A Yes.

Q Are the main offices of the Standard there at Cincinnati?—A. No.

Q. The Standard of Kentucky?—A. No, they are at Covington, Kentucky.

Q. But your office is at Cincinnati?—A. No, my office is at Covington, Kentucky, but I live in Cincinnati, my residence is in Cincinnati.

8305 Q. Covington is just across the bridge?—A. Just across the river.

Q. From Cincinnati?—A. Yes.

Q. How long have you been connected with the Standard Oil Company?—A. Since January or February, 1886.

Q. Started in what capacity?—A. Started in as what was known as circuit manager, manager of the men traveling around in the circuits.

Q. The Standard Oil Company of Kentucky is a merchandising company only, is it not?—A. That is all, yes.

Q. It doesn't do any refining?—A. It does not.

Q. During the years that you have been connected with the company, of course you have become familiar with its manner and method of doing business?—A. Yes.

Q. Do you know a man by the name of Maxon?—A. Yes. Maywood, I think his name is. There are two or three. There is one that was special agent at one time at Decatur.

Q. Was he the special agent of the Standard of Kentucky?—A. Of the Standard of Kentucky, yes.

Q. Do you know a man by the name of Kercher?—A. Yes. Charles Kercher his name was.

Q. Yes. Both Maxon and Kercher have testified in this case as witnesses for the Government. Maxon, whose testimony was read into the record, testified, in substance, that the Standard Oil Company of Kentucky had created a bogus peddling concern which it operated in different places for the purpose of compelling retail dealers to buy from the Standard Oil Company or quit business. What do you say with respect to that statement, Mr. Collings?—A. It is not true.

8306 Q. Did the Standard Oil Company of Kentucky ever start any peddling concerns?—A. They did.

Q. And operate them?—A. Yes.

Q. What do you mean by peddling concern or company?—A. As a rule in those days we would call a peddling concern two or three small wagons, one-horse wagons, tank wagons, a tank that would hold about 150 to 200 gallons of oil and gasoline; go around and sell to consumers from house to house by the gallon or quart.

Q. The peddler is the man who sells direct to the consumer?—A. Yes; to the family.

Q. What was the usual manner in which the Standard disposed of its oil?—A. Through tank wagons to the dealers.

Q. Through tank wagons to the dealers, and these dealers in turn——A. Retailed it to the consumer.

Q. Retailed it to the consumer?—A. Yes.

Q. The dealer, however, in most every instance is a storekeeper who retails it to a customer who calls at his store.—A. Yes.

Q. And, as opposed to the trade handled in that way, here and there peddlers of oil would spring up who would sell oil to the consumer by calling upon the consumer at the consumer's home?—A. Yes.

Q. That is the fact, is it not?—A. That is a fact.

Q. Now, will you please tell us why, in those instances where the Standard Oil Company of Kentucky acquired or operated peddling concerns, it was done?—A. It was done mainly because in those

8307 towns where we started, or were compelled to start, we were losing business, due to the fact that the peddler was selling trade that naturally should have been sold by our people, the people who bought of our tank wagons, the merchants.

Q. What about the peddler's prices in those instances where you instituted peddling outfits of your own?—A. In some cases the oil

business and the gasoline business we found was being seriously hurt because of the excessively high retail prices of the dealers, and also of the peddlers we were selling. I have in mind cases where we would reduce our price in line with the general decline in the price of oil, we will say. I have known of cases where the price went down from 12 to 8 cents and the dealers would hold on to a 20-cent price, retail. Argue with them that you are losing business, that the gas companies and the electric light companies are absorbing the lighting business, and your oil business is going away, you could sell a great deal more if you would sell at reasonable prices, and they couldn't be induced to change the prices.

Q. That is, the Standard Oil Company discovered in those instances it was losing gallonage?—A. Yes; the oil business was being diminished.

Q. Because of the excessively high prices that the local dealer was charging the consumer?—A. Yes.

Q. And the illuminating business was going to the gas company or the electric light company, as the case might be?—A. Yes; we had a number of those cases.

8308 Q. I suppose you have discovered in your long and wide experience that the gas companies and the electric light companies are very substantial competitors of the Standard Oil Company?—A. Very aggressive.

Q. I will call your attention later, Mr. Collings, to a number of specific cases illustrative of the statement that you have just now made. In some cases, then, the peddler was put in because your gallonage was falling off because of the high local retail prices. Were there any other cases where peddling outfits were put in by the Standard Oil Company of Kentucky?—A. Yes; there were some instances that our wholesale competitor would start a peddling outfit in a name other than his own, or buy out some peddler that was already in business and run it under its old name. In some instances we put in a similar outfit.

Q. In order to meet that competition?—A. In order to prevent them from taking all the business away from our merchants through tank wagon customers.

Q. And were there any other instances?—A. No; I don't recall. Those are the two controlling reasons for running the peddling business. We never really favored it. We would much prefer selling to the dealer. That was the business that we were especially engaged in and prepared to take care of.

Q. Were there any cases where you put in peddling outfits where the peddlers were cutting the prices that had been established

8309 by the dealers to whom you sold, and in that way were taking away the dealers' business?—A. Yes; in nearly all those cases where we found that our merchant trade was losing business it was due to the other peddlers who were handling the competing oil, selling it to the consumer at a less price than the dealer would sell at.

Q. And in this instance, in order to protect your gallonage, to maintain your business in that particular community, you put in peddlers' outfits?—A. We had to sell oil through the same channels that they did, the same methods.

Q. Maxon also testified, among other things, to certain methods which the Standard peddling concerns used, such as canvassing with girls, I think, at Decatur, and making radical cuts in prices, and making fraudulent tests with lamps. What have you to say concerning that, Mr. Collings?—A. My recollection is that at one time we were forced to put out some canvassers, for the reason that the competitor had been circulating reports derogatory to the quality of our oil.

Q. Where was that—at Decatur?—A. At Decatur, and it happened at two or three other places, but I remember this Decatur case. They were trying to obtain a fancy price for their oil, calling it a fancy name, and giving away half a gallon sample to anybody that wanted to try their oil, and they would send a man around with a sample and put it in the lamp in a lady's house; go in to the housekeeper and get the lamp and clean it out and put in a sample of this fancy oil. They said, "Now, if you want some of this oil, go down and buy it of so-and-so; it will cost you a little more than the ordinary oil, but it is much better." That was the argument used by the competitor. In order to demonstrate that the oil we were selling was as good if not better than the competitor's, and that this was all a "hocus-pocus" game of trying to get the consumer to pay a fancy price for oil—no better than the oil we were selling—we had to get some canvassers to go around and make demonstrations and put our oil in the lamps and show them that this high-priced oil was not a particle better than the oil the merchants that handled our oil were selling at a much less price. That was the object of that work, and it was effectual too.

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Q. These young ladies that you employed at Decatur, were young ladies from that town?—A. Yes. My recollection is that Maxon himself employed them. They were furnished with literature, circulars. We had a lot of pamphlets about the use of lamps and wicks and all that sort of thing, and how to get a good light, and advertising incidentally the quality of our oils; distributed those at the same time.

Q. And they were educated by a study of that circular matter?—A. Yes. They were shown how properly to clean and trim a wick and fix a lamp up in proper shape, and how to get the best results, the proper results, with the oil.

Q. Why were girls used there in Decatur instead of men?—A. Our experience had shown that a girl could get into a house nine times out of ten when a man couldn't. Send a man there and they wouldn't let him in. Mostly they had to talk to the women, anyhow, and the women didn't care about having a man come in and fool around in their house with their lamps.

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Q. This circular matter that you issued, did that instruct the girls how to make a fair test of the burning quality of the oil in the

lamps?—A. No, it instructed anyone; householders and all were told in there what to do to their lamps, and what shape to keep their lamps in, how often to trim their wicks, and how to get the best results. It was a circular that everybody used. We distributed them generally everywhere.

Q. Did you issue any circular of instructions or any sort of instructions to these girls instructing them how to make a fraudulent test of the lamps?—A. We certainly did not.

Q. If anything of that kind was done, it must have been done, then, by Maxon himself?—A. Yes. If there was anything done, Maxon did it. And he never let anybody know of it, that is, anybody connected with the business above him. I never heard of such a thing.

Q. In attempting to get business in a town, what about your method of canvassing the trade when you began selling direct to the consumers?—A. We would send a man or some of these girls around and advertise the fact that we were going to sell oil by the gallon to the consumer, that we had an extra good quality of oil and the price that they could buy it at, and of course while they went about from house to house they obtained the names of the resident and the family, how much oil they used, where they bought it, and all that kind of thing, and what they paid for it.

8312 Q. Those canvassers would endeavor to ascertain what consumers were not buying Standard oil?—A. Always.

Q. And then when the peddler was put in there, his efforts were directed to get the business of the consumer who was not buying Standard oil. That is true, is it not?—A. That is the primary object of putting them out.

Q. The peddler was not supposed to canvass the trade of your wholesaler?—A. No.

Q. Who was consuming Standard oil?—A. No, he was not.

Q. What about price cutting by these peddlers, take it as a general proposition; I will get into the details later on.—A. The peddlers, as a rule, are always disposed to cut the merchant's price, because that is one of the ways that they get the business. The family as a rule, of course, prefer to buy of the corner grocery, where they buy everything else, and they are not much disposed to encourage a peddler unless he offers them some little inducement.

Q. I am talking about price cutting by the peddlers that the Standard Oil Company started?—A. The only cases that I can recall, or that I have in my mind in a general way, where the peddlers we sold our oil to would cut prices, would be where you had a fictitious retail price, a very high price.

Q. Tell me just what you mean by that.—A. We would figure this way: It has always been a kind of a general rule that if a peddler got 3 cents a gallon over the tank wagon price, that is, the price at which the merchant bought his oil from our tank wagons, that

8313 he was getting a fair profit. A peddler ought to sell on an average about 150 gallons a day of oil and gasoline, and because of his coming to the plant to get the oil, he gets it less than the

merchant. He takes it right out of the storage and saves us the trouble and expense of hauling. He gets it at half a cent or a cent less than the merchant, as the case may be. Therefore, he is getting about 4 cents profit. Furthermore, no peddler that ever I heard of ever gave full measure. Most of them figure out about 5 to 10 gallons to the good on their day's work. So that at 4 cents a gallon it will be about, at 150 gallons a day, $6 a day. A man with one horse and wagon that can make $6 a day is doing very well.

Q. You don't mean to suggest by that that the Standard peddlers gave short measure?—A. Oh, no, because our rule was that if a man came back with more oil than he accounted for—if he sold 150 gallons we would say to him, "Why, you didn't give good measure, or you wouldn't have anything over." Sometimes he would say, "Well, that is due to expansion." We would tell him, "You must absolutely give good measure, correct measure."

Q. So that in many instances, as I understand your testimony, you discovered that the peddler was selling his oil to the consumer at too large a price, a price that gave him a greater profit than even 4 cents a gallon?—A. Oh, yes.

Q. And in those instances, as I understand you, you were frequently compelled to put in peddling outfits in order to force that price down——A. We were.

Q. To what you regarded as a legitimate basis?—A. That is true.

8314 Q. Do I understand, Mr. Collings, that you had as a part of the policy of your business there a general price at which these peddlers were to sell their oil?—A. Yes. As I say, we figure that from 2 to 3 cents over the tank-wagon price was a fair price for the peddler. They could make a good living out of that.

Q. And that you watched closely?—A. Yes. And where they tried to hold up the customer to a fancy profit above that we used our efforts in one way or another to get them to bring it down, the object being, of course, to increase the consumption of oil. We felt, of course, that if they held the price up to 15 or 20 cents a gallon for oil people would be more economical in the use of it.

Q. Maxon also testified that under instructions from you, R. N. Reed, and E. B. Stanley he made deals with merchants at Paris, Illinois, in 1898, at Urbana in 1891, and at Vandalia in 1900 whereby a 5-cent price was made at those towns in order to drive out the competitor. What have you to say with respect to that statement of the witness Maxon?—A. That it is not true. I never heard of it, and it could not have been done without my knowledge.

Q. Was there ever a 5-cent price at any of these places in the years that I have mentioned?—A. I never heard of it.

Q. You would have known of it if there had been?—A. I would.

Q. Mr. Maxon also testified that the inspection of oil by the oil inspector in Illinois was a farce, and that it was the fre-

8315 quent practice of the Standard Oil employees to induce an inspector, by giving him a cigar or a drink, to condemn a con-

petitor's carload of oil, and in that connection he gave one instance at Vandalia which he said occurred in 1900. What have you to say with respect to that statement, Mr. Collings?—A. That I never heard of such a thing. I don't believe it could have happened without my hearing of it. I don't believe it is reasonable that an inspector could be influenced in any such way.

Q. What about the inspection of your oils with respect to fire test by the Standard itself?—A. We were always careful to have our oil inspected, both before it was shipped to us and then after its receipt, to be sure that the oil was up to required State test.

Q. Tell us just how that is done.—A. It is according to the law of each State. For instance, Illinois, I think, requires a fire test of 150. We order from the refinery an oil of 150 test, and it is assumed that they inspect it before they ship it. We inspect it when we receive it, and if it was not up to test the refinery would get into trouble with us.

Q. That is, it is first inspected at the refinery?—A. Yes.

Q. For the purpose of having the refinery make certain that it is sending the 150 test oil, if you please, if the oil is going into Illinois?—A. Yes, sir.

Q. By whom is that inspected at the refinery?—A. I don't know. They have a regular corps for that purpose, I understand. I have never operated a refinery.

8316 Q. The oil is then shipped by the refinery to the receiving stations of the Standard of Kentucky?—A. Yes.

Q. Is it again inspected by the Standard of Kentucky?—A. No, unless there is some question raised. The inspector of the State is supposed then and there to inspect it, and if there is any question raised we inspect it. We do frequently, however, inspect oil from time to time, just to keep track of the refineries, to see that they are living up to our requirements.

Q. And is the test reported by the local agent?—A. Yes.

Q. Where?—A. For instance, if it was shipped to Decatur (that is a main station), and there was anything wrong with the oil, it would be reported promptly to Covington or Cincinnati, as the case might be.

Q. Did you ever give Maxon, or know of such a thing being done, instructions to secure the condemnation, by a State oil inspector, of competitors' oil?—A. I never did.

Q. Did you ever know of anything of that kind being done?—A. I never heard of such a thing.

Q. Did you ever furnish any money for any such purpose?—A. Certainly did not.

Q. Or any money that could have been used for any such purpose?—A. I don't see how it would be possible for them to expend the money unless they did it out of their own pocket. They couldn't have got it out of the funds of the Standard Oil Company.

8317 Q. The same witness, Maxon, testified that it was the practice of the Standard Oil Company of Kentucky, known to the company's general officers, to draw oil of different brands from

the same tank and sell it at different prices. What have you to say with respect to that?—A. It is not true.

Q. Has there ever been any such practice or custom?—A. Never has been any such custom.

Q. Or have you ever known of that being done?—A. I might have heard of an instance of this kind. We have the two grades of oil, we will say, Water White and Prime White, and you run out of Prime White stock. The customer demands Prime White and won't pay anything but the Prime White price. We will deliver him Water White and say, "This is Water White, but because we have not got the Prime White, and because of your demanding Prime White and insisting on it, we will give you this at the Prime White price," but we don't deliver it as Prime White.

Q. Water White is a higher-priced oil than the Prime White?—A. Yes; generally a cent or a cent and a half difference in the price.

Q. What you did in those cases was to deliver Water White to a customer who had ordered Prime White?—A. Yes, and sell it at the Prime White price.

Q. And sell it to the customer at the Prime White price?—A. Yes.

Q. So that the customer got all the benefit of a substitution of that kind?—A. Yes; he was made aware of the fact that he was getting a better oil.

Q. I suppose that was done because the retailer's trade was
8318 accustomed to handle Prime White oil?—A. Yes.

Q. And it was easier for the retailer to sell the Prime White than it was for him to sell the Water White, although the Water White might have been a better oil?—A. Yes. He might say, "I have got to sell this oil at the Prime White price, I have been selling it at this price, and I have to continue to sell it, and I can't afford to pay the Water White price."

Q. Did you ever have any arrangement with any deputy oil inspectors at Indianapolis whereby the Standard received information of competitive shipments?—A. We did not. I don't believe any deputy inspector could give the information.

Q. Did you ever know of anything of that kind being done?—A. I never heard of such a thing.

Q. Why couldn't a deputy oil inspector give such information?—A. You mean as to shipments to the customers?

Q. Yes, sir.—A. What would he know about where the competing oil company would deliver or ship its oil?

Q. A witness by the name of Frowmeyer, whose testimony was read into the record, testified that that took place in connection with a deputy oil inspector out at Indianapolis.—A. Well, I never heard of it, and I don't believe there is a word of truth in it.

Q. And you now say that information which a deputy oil inspector would have of competitive shipments would be absolutely worthless, so far as the Standard Oil Company was concerned?—A. Yes; he wouldn't have any.

Q. He wouldn't have any at all?—A. He doesn't stay around the competitor's plant and watch his shipments; he goes there
8319 probably once a week.

Q. To test the oil in the tank?—A. To test the oil in the storage tanks; that is all.

Q. The State oil inspector's records, which he keeps, are public records, are they not?—A. In some cases; in some States they are not.

Q. How about Indiana and Illinois?—A. I can't say; I don't know.

Q. In the main they are public records, kept open for the inspection of anyone who goes there to examine them, are they not?—A. Yes; as a rule, I think the State law permits you to examine the inspector's records.

Q. Was Frowmeyer ever furnished any money, either actually or figuratively speaking, for the purpose of purchasing information from railroad employees?—A. He was not.

Q. He testified that, figuratively speaking, he was.—A. Well, he would have to explain that. I don't know what he means by "figuratively speaking." "Phoney" money, I guess.

Q. You say neither actually nor figuratively?—A. Some such money, I guess; that is figurative money.

Q. Were any Standard Oil employes ever instructed or authorized to represent to customers that competitors were in reality mere Standard Oil dummies?—A. Never were. State that over again. Let me get that clear.

The question was read.

A. Never were. I can't conceive of what benefit that would be. I think that would help the other fellow.

8320 Q. You don't know of anything of that kind ever having been done?—A. I do not.

Q. You certainly never authorized it?—A. I did not.

Q. Did the Standard Oil Company have any recognized tricks to practice in connection with the testing of lamps?—A. They did not.

Q. A witness by the name of Hibbs, whose testimony was read into the record, who was an old employee of the Standard of Kentucky, testified that there were six tricks, numbered from 1 to 6. Did you ever hear of anything of that kind?—A. I never heard of such a thing.

Q. And you have been connected with the Standard Oil Company since 1886?—A. Yes.

Q. And have worked up from the bottom?—A. Yes.

Q. Did you ever come in contact with anything of that kind?—A. I never did, and never heard of such a thing.

Q. This same man Hibbs also testified that after he left the employ of the Standard Oil Company in 1902 and started in business for the Royal Oil Company he sold a carload of oil at Farmington, Illinois, and that thereupon you sent men employed by the Standard to have these orders countermanded by cutting the prices, or giving rebates, or giving money, and the only way that he met this competition was

by giving false orders or representing certain orders to have been sold which in fact were not sold. What have you to say with respect to that statement?—A. I do not recall any such instances having——

Q. Well, did it ever take place?—A. Not that I ever heard of.

8321 Q. Did you ever give any of your employees orders to undersell or cut prices or give rebates or give money in connection with a carload thus sold by the Royal Oil Company at Farmington, Illinois?—A. I did not.

Q. This same man Hibbs also testified that R. E. Lashley, special agent at Peoria, directed Hibbs to go to Monmouth and make arrangements with employees of different railroads to furnish information as to Royal Oil Company shipments, and that he made such an arrangement with a freight handler named McCoy, paying him $2 a month sometime in about the year 1901 or 1902. What do you know about that?—A. Well, I don't know of any such thing. I never heard of it.

Q. Did you authorize Mr. Lashley to direct Hibbs or permit Hibbs or authorize Hibbs to do anything of that kind?—A. I did not.

Q. Did you furnish Mr. Lashley with any fund that would enable him to carry out a plan of that kind?—A. I did not.

Q. What was the practice of the Standard Oil Company of Kentucky with respect to paying money to railway employees for information of competitive shipments?—A. Did not do it and did not permit it.

Q. So that if Lashley did anything of that kind it was contrary to instructions?—A. It was.

Q. And the money must have come from what source, if it was done at all?—A. If it was done it must have come out of his or somebody else's private pocket; it could not have come out of the company's funds.

8322 Q. The testimony of a man by the name of Merritt was read into the record, and the testimony of a man by the name of Ells. The gist of Merritt's testimony was that he was employed by Mr. Bush, assistant manager of the Standard at Peoria, for $20 a month, to get for him (Bush) information of the Royal Oil Company's shipments, and that he got such information from McKinley, a teamster of the Royal Oil Company, for about a month or six weeks. What do you know about that?—A. I never heard of it.

Q. Could a thing of that kind be done in your territory without your knowledge?—A. It could not; that is, unless they paid the money out of their private pockets and concealed it.

Q. Would it have been possible for your local manager to pay $20 a month for a thing of that kind without your knowing of it?—A. He couldn't do it out of the company's funds without my knowing it.

Q. Did the Standard Oil Company of Kentucky ever have in its employ at Peoria a man by the name of Hull, that you remember?—A. No.

Q. I show you Petitioner's Exhibit 680, which I shall ask you to read [handing paper to witness].—A. Yes, I have read it.

(The witness was also handed Petitioner's Exhibits 682, 683, 684, 685, 692, 700, 702, and 709, which he read.)

Q. These letters were offered in evidence by the Government during the testimony of a man by the name of Wootten. He tes-
8323 tified that he stole them while he was an employe of the Standard Oil Company. They relate to competition of the Red C Oil Company. Will you please tell us fully and in detail what there was to that whole subject-matter?—A. This company, the Red C Oil Company, headquarters at Baltimore, had a way every once in a while of sending out one or two men, rushing them around over the South Carolina field, and making up carload orders by cutting our prices from a half to one and a half cent a gallon, and, as we had lost quite a good deal of business in years gone by by this system, we finally decided that we would have to be more alert, have our men more watchful, and whenever we heard of these men coming over in the field, send a salesman there and find out first of all what prices they were actually making. Prior to that time they would go in and sell a car of oil, and the first we would know of it would be when our customers quit buying of us, and they said they had a lot of oil they bought from the Red C Oil Company. Now, to find out why they cut our prices and sold the oil, and, if possible, try to satisfy our customers and retain them, we tried to have a man on the ground whenever this Red C man turned up, who could find out this information as to what prices he was trying to make and what inducements he was offering our customer, so he could communicate with the Atlanta office, and they in turn could communicate with and advise me. That is the explanation as to why we did send a man over there at this time.

Q. And by whom was the cut initiated?—A. By the Red C Oil Company. As you will see here in every one of those letters where their prices are mentioned, they are from half a cent to a cent and a half below our price.

8324 Q. These letters of yours show that?—A. Show that fact.

Q. Show on their face that the cut was initiated by the Red C?—A. And you will note further that I questioned the possibility of their making that price on a fair grade of oil and called our people's attention to the fact, giving them the prices current in Baltimore in carloads for the same grade of oil that we were handling, and that it could not be delivered at the prices at which these merchants claimed they were buying. But nevertheless they did buy, so the evidence was that the Red C must have sold them some kind of oil. Whether it was as good as ours or not I never believed. If you will analyze these letters you will see that the reductions we did make were not to the same level as the Red C Oil Company. We didn't go down to their very low prices, except, I believe, in one case, and that was at Union, South Carolina.

Q. In connection with the Union Cotton Mills?—A. Yes; because they were a very large buyer of both refined and lubricating oils. They would take a full tank wagon load every time our wagon went

out to their plant. They wouldn't take it otherwise. They wanted a full load. It was cheaper for us to deliver it that way, and we felt that they were entitled to a better price than the ordinary buyer.

Q. What about the practice of your company with respect to price cutting during the years that you have been in charge?—A. We do not initiate the cut. We rely on our having been the pioneers in establishing the business, serving the trade with good oil in the
8325 most up-to-date manner, and that if a competitor comes in there to get our business he must necessarily cut the price or offer some inducement in order to wean the trade from us. Therefore, it is not necessary for us to cut prices.

Q. That is to say, you rely upon the fact that the Standard Oil Company is the pioneer in the field?—A. That is right.

Q. That you have gotten the business in the first instance?—A. And educated it to the methods of receiving their oil and the advantages of having it, as a rule, delivered by tank wagon; 90 per cent of nearly all of the oil is delivered that way, and we are the pioneers in that method of delivering.

Q. You are not only the pioneers in that method, but, generally speaking, throughout your entire field you have been the pioneer oil sellers, have you not?—A. Yes; we went in advance of any one else and established stations, invested large sums of money all over the South in establishing stations and giving the trade the benefit of having the oil there at their own town ready for delivery any day they wanted it, as against receiving it in barrels from some far-distant point.

Q. So that in the beginning you start out with the trade all yours?—A. True.

Q. And the competitor comes in there and gets it ordinarily, how?—A. By cutting the price, as a rule. We have a local representative who is known and well liked by the local people; he is one of them, and he has naturally an advantage over a foreign
8326 salesman that comes in there trying to sell oil. So that your outsider has to offer some inducement to the trade in order to secure business.

Q. And that inducement, your experience has shown you, is ordinarily what?—A. A cut in the price. This is just a case in point right here. Every one of those carloads of oil that was sold, every barrel of that oil that was sold——

Q. By the Red C?—A. By the Red C—was from a half cent to a cent and a half below our market at that time, below a fair price. If they had sold oil comparable to the oil that we were furnishing this trade, they could not have delivered oil at that price. They gave them a prime white oil under the name of Columbia Headlight; whereas, we were furnishing them a high-grade water white oil.

Q. The Columbia Headlight was supposed to be a water white oil, when as a matter of fact it was not?—A. That was the claim they were making, that it was water white and as good as any oil the Standard ever made.

Q. Was it?—A. It was not, because their real water white oil they held at 2 cents above their Columbia Headlight. We furnished the trade with evidence of that fact—on their own quotation cards.

Q. As I understand you, most of these competitors that have come into the field against you in your territory have been casual competitors who would come in here and there and attempt to sell a carload of oil or a large quantity of oil?—A. Yes.

Q. Occasionally?—A. Occasionally. And they flim-flam the trade by talking about trusts, and monopolies, and making mil-
8327 lions for Rockefeller, and all that sort of talk, and give the poor man a chance, and work up all the prejudice they can in a customer's mind by talking that sort of riff-raff.

Q. And, in addition to that, making a cut in price?—A. Yes, and selling a cheap grade of oil under a fancy brand. About 90 per cent of their business is secured in that way.

Q. Do you remember of any instances where your company initiated a price-cut in your field for the purpose of driving a competitor out?—A. I do not recall that we ever found that necessary. If he would stick to our prices and adhere to the quality that we sold he would find it very poor pickings. In time he would soon get out of the way.

Q. Have you with you now, Mr. Collings, a list of Atlanta prices for the years 1895, 1896, and 1897, and of the South Lima crude prices for 1895 and 1896?—A. 1895, Atlanta? Yes, I have the prices for 1895 and 1896. (Referring to memorandum.)

Q. What was the price of refined oil in Atlanta during the year 1897?—A. 8 cents.

Q. Did it ever go to 6½ during that year?—A. Never at any time that I remember.

Q. Do you remember the Commercial Oil Company?—A. Yes. Atlanta?

Q. Yes.—A. Yes, sir.

Q. That was a competitive company?—A. Yes; a small concern.

Q. A small concern whose business was confined largely to Atlanta?—A. Practically all confined to Atlanta.

8328 Q. Mr. Wootten testified that the competition in 1897 between the Commercial and the Standard at Atlanta became such that the Standard lowered its Atlanta price to 6½ cents.—A. Never did any such thing.

Q. And also that the Standard gave rebates of from 50 to 75 cents a barrel on the refined oil in competition with the Commercial. Was that ever done?—A. That was a uniform custom in dealing with the jobbers. It is not a rebate. It is a jobber's allowance. The jobber is billed, say, at 15 cents a gallon less 75 cents or 50 cents a barrel, according to the volume of his business. If he is a very large jobber he got a commission of 75 cents a barrel; if he is a small jobber he got 50 cents a barrel. That is a common practice in all the oil companies;

they concede that differential to the jobber in that section of the country.

Q. Did the Standard Oil Company ever cut its prices as against the Commercial?—A. Not that I can recall.

Q. For the purpose of driving the Commercial out of business and getting its business away from it?—A. Certainly not for that purpose.

Q. If any cuts were initiated there, by whom were they initiated?—A. Most likely by the Commercial Oil Company. That was the only way they could get business.

Q. The Standard was there in the field and had its business?—A. Had the old trained tank-wagon drivers, who had been there for years and knew every customer on his route intimately, and it is natural that a new driver going around there would not be able to take those old customers away from a man who had been serv-

8329 ing them for years, unless he offered some inducement.

Q. Wootten testified that as fast as they made customers their prices would be cut by the Standard, and that every attempt was made to take the business away from them along those lines in that way.—A. Well, that is not true. What he means is that whenever they got a customer of ours by cutting the price we would meet that cut and get him back again. That is about the size of it.

Q. You mean the Standard would meet the cut of the Commercial?—A. Yes.

Q. And in that way get the trade back?—A. Get the trade back.

Q. What do you mean by "meeting a cut?"—A. As a rule we would lower our entire market, but sometimes to a special customer we would make the same special price that Wootten would make. He would make a special price to a large customer.

Q. Do you mean that you would lower your price to the price made by the Commercial Oil Company, or that you would go below their price?—A. No; we would simply go down to the price that they had sold this particular party.

Q. Your theory being what, in the event of equal prices?—A. That we could hold the business.

Q. Have you the prices of South Lima crude at the wells in the years 1895 and 1896?—A. I have.

Q. Will you state them, please?—A. The price opened in 1895 at 50 cents a barrel, and went as high as $1.25.

8330 Q. What was the low price for the year?—A. 50 cents a barrel.

Q. What was the high price?—A. $1.25.

Q. And what was the closing price for the year?—A. 80 cents.

Q. So the price of the Lima crude throughout the year 1895 at the wells ranged from 50 cents to $1.25?—A. Yes.

Q. Now, what class of oil went into Georgia?—A. Refined from Lima crude. In 1895, I think that is correct, for the reason that I have the Lima prices. If it was not Lima I would have whatever refinery it came from.

Q. And in 1896?—A. The same thing.

Q. What was the range in price in 1896?—A. It ranged from 52 to 80; it opened at 80 and closed at 55. Went back, practically, to what it started out with in 1895.

Q. Is there any relation between t. e price of crude oil at the wells and the price of refined oil?—A. Undoubtedly. Absolutely controlled by the price of crude, necessarily.

Q. I observe that the price of oil in Atlanta during the year 1895 ranged from 8 to 12½ cents.—A. Yes.

Q. During that year the price of crude ranged from 50 to $1.25 per barrel?—A. Yes.

Q. That when the price of crude was 50 the price of refined at Atlanta was 8 cents?—A. Yes. That was in 1895?

Q. In 1895.—A. Yes; when the price of crude was $1.25 the price of refined was 12½.

Q. In January, 1897, the price of crude was 55, was it
8331 not?—A. Yes.

Q. And the price of refined at Atlanta was then what?—A. 8 cents—the same price that it started with in 1895 when the crude was 50; practically the same conditions.

Q. Those changes in price that I have indicated as existing at Atlanta, were they general throughout your territory?—A. They were.

Q. The movement was up and down in the price of refined oil as the movement was up and down in the price of crude?—A. Yes, sir. The primary markets regulate it.

Q. Throughout your entire territory?—A. Yes. The primary markets regulate the prices of our selling.

Q. What about the billing price, the Cleveland basis? Do you know anything about that?—A. The price in 1896, the tank-car price, declined from 5¼ to 3¼—2 cents a gallon.

Q. What do you mean by that?—A. That was the cost at the refinery at that time.

Q. So that declined 2 cents a gallon?—A. Yes, and our selling price declined 2¼.

Q. Does the selling price of the refined oil always decline in the exact proportion that the billing price of the crude is reduced?—A. As a rule it does, but not necessarily. There might be instances where it would not follow the same reduction—good and sufficient reasons why it should not.

Q. And why is it, Mr. Collings?—A. For instance, you might have been forced at some point by your competitor, in order to hold
8332 your trade, to reduce your price prior to this general reduction. Your competitors frequently anticipate the movement in the primary markets. They get a line on when the markets are on the downward trend, and they figure that they can anticipate that, and they lower their prices in advance in order to secure some business, figuring that they will stock up on cheap oil in a month or two after that, and they will go out and make contracts for six months on the then prevailing price—that is, cutting the price half a cent—figuring

that they are going to buy it back before the expiration of the six months at a lower price because of the general downward trend. In that case we would probably lower our market along with them at that particular point to hold our business, and when the general decline came we wouldn't lower that market.

Q. In addition to that the trade doesn't like reductions or advances of a half or a quarter of a cent, does it?—A. My experience is that the general small trade throughout the country are not favorable to the advancing and declining of price, because they can't change their retail selling prices correspondingly, and they prefer a uniform price. Therefore, I have always endeavored to hold the markets along without jumping up and down on quarters and halves every time there is a little fluctuation in crude, a quarter or an eighth of a cent; I let them alone. They will even themselves up in the course of a year.

Q. Did the Standard Oil Company of Kentucky finally purchase the Commercial Oil Company and the People's Oil Company of Atlanta?—A. They did.

8333 Q. Were those two businesses combined?—A. They were.

Q. Under what name?—A. The People's Oil Company.

Q. Was the business continued then by the Standard Oil Company?—A. It was.

Q. For how long?—A. I don't remember, but it seems to me three or four years.

Q. Both the Commercial and the People's Oil Company had trade, I suppose, from the time they were purchased?—A. Yes, and they had certain trade-mark brands that they had built up by advertising and giving away oil, half-gallon and gallon samples and things like that; they created a demand for a certain amount of oil.

Q. And you wished the benefit of that trade?—A. That was one of the things we bought from them, their trade-marks and property, and we wanted to use them and get the benefit out of them, and tried to get the value.

Q. You maintained their organization for some time?—A. We did. Mr. Wootten, I think, had charge of it.

Q. Wootten testified that as soon as the Standard purchased the Commercial and the People's that the price jumped from 6½ cents to 13 cents, or shortly thereafter.—A. It never was 6½.

Q. What is the fact about that?—A. What was the year, now?

Q. 1898.—A. In 1898 the price of refined oil from tank wagons—fireproof oil—at Atlanta was 9 cents and the highest was 9½ during that year, and that corresponded with an advance in the price of crude, half a cent.

Q. You bought the Commercial and the People's in Jan-

8334 uary, 1898, did you not?—A. I don't recall those dates.

Q. That was Mr. Wootten's testimony.—A. Well, I imagine——

Q. Now you say that during the whole year 1898, after you had purchased the Commercial and the People's, the price continued at 8 cents?—A. No, no. The price in 1897 was 8 cents.

Q. And in 1898 was what?—A. 9. That was in accordance with an advance in the refinery price, and it stayed 9 for quite a long time.

Q. What was the advance in the refinery price during the year 1898?—A. I haven't got that here, but I judge, from the advance in the price of crude, it would be a half, possibly one cent.

Q. What was the advance in the price of crude?—A. From 41 to 75. That would be about a cent a gallon.

Q. And the advance in the price of refined——A. Was only half a cent.

Q. Was only half a cent a gallon?—A. Was only half a cent.

Q. Now, was that advance in the price of refined from 1897 to 1898 uniform throughout the territory?—A. It was a general advance based on the primary market.

Q. And it was not, therefore, confined simply to Atlanta?—A. It was not.

Q. And it was not due to or in any wise related to your acquisition of the Commercial or the People's?—A. It was not.

Q. Wootten testified that the People's Oil Company was run under his (Wootten's) management as an independent company,
8335 and that he was instructed to maintain his markets on an even basis with the Standard, that he made his reports to E. C. Kimball, post-office box 872, Cincinnati, Ohio. What have you to say with respect to that statement?—A. Well, it was run under Mr. Wootten's name, and no doubt he did report to Mr. Kimball. I think that box number is the treasurer's box number. Kimball was Mr. Holmes' assistant. Mr. Holmes is the treasurer of the Standard Oil Company of Kentucky. I think that box number was Holmes' regular box.

Q. You say Wootten was the manager of the People's?—A. Yes, sir.

Q. Were his employes advised of the fact that the Standard had acquired the People's?—A. Well, I, of course, don't know positively about that, but I imagine he——

Mr. KELLOGG. Don't say what you imagine.

WITNESS. Well, all right. I ought not to say that, that is correct.

Q. Were any orders or instructions given by you in that regard?—A. No, they were not. There were no instructions given as to what he was to say to his employees.

Q. That is, he was made manager and was——A. We held him responsible.

Q. And was given general authority to conduct that business?—A. Yes, and he was held responsible for the proper conduct of the business.

Q. How long did you continue to operate the People's?—A. As I said, I would have to look up my minutes in my books on that. I don't know now. I think it was five or six years.

8336 Q. Why didn't the Standard operate the People's under the name of the Standard Oil Company?—A. The principal reason was that they had built up a trade, as I say, by extensive adver-

tising and talking up the quality of their oil, etc., on a certain brand of their goods that the trade wanted or demanded, and we wanted to get the benefit of those trade-marks. That was part of the stuff we bought from them.

Q. That was one of the reasons why you purchased the business, wasn't it?—A. Yes.

Q. I suppose the People's Oil Company had some good will?—A. They had, certainly; they had some customers that they had established; they had employed local people, employed local salesmen and local people around there who managed to work up through their friends an oil business for the People's Oil Company, in some way or other, and that good will was worth something, and we wanted to get the benefit of it.

Q. Could you get the benefit of that good will or could you get the business of that organization if you abolished the organization and changed the name?—A. No; it would all have been a dead loss.

Q. Isn't it true that that was the theory under which you proceeded?—A. It was.

Q. And that was why the Standard maintained the name of the People's Oil Company?—A. Yes.

Q. And maintained it as a separate organization?—A. Yes.

Q. Because it had an organization, it had built up the business and it had brands of oil which it was selling under their
8337 peculiar names?—A. Yes.

Mr. KELLOGG. Mr. Rosenthal, would you call that leading the witness?

Mr. ROSENTHAL. Hardly, no; I am simply repeating in one question now what he has covered in a number of answers.

WITNESS. Of course there is another advantage. If you would merge that business into your own it would be very difficult to keep track of the success. Oftentimes we were anxious to find out what these fellows could make out of a business of that kind, and we would take a man like Wootten and let him run it. We would say, "Now let us see what you can do down here. You have always said the reason you couldn't make money was because the Standard cut prices. Now you go ahead and run this thing and show us how much money you can make out of it." For that reason we kept it separate. We wanted to see what he could do with it.

Q. This same man Wootten also testified at Washington that, in 1901, the Lake Carriers Oil Company of Cleveland appeared at Atlanta as a competitor of the Standard Oil Company, and that thereupon the Standard's tank wagon prices were reduced from 13 to 9 cents, and that the Lake Carriers sold out to the Standard in the winter of 1901, and that thereupon the Standard's price was advanced to 15 in the spring of 1902. What are the facts with respect to that?—A. The facts were that there never was a concern in Atlanta by the name of the Lake Carriers Oil Company. I don't know what he refers to. There was one, I believe, over at Birmingham, but there was no such concern at Atlanta.

Q. Did the Atlanta price ever reach 13 cents in 1901?—
8338 A. It did not.

Q. Did it ever reach 15 cents in 1902?—A. It did not.

Q. Were there price fluctuations in 1901?—A. There were.

Q. At Atlanta?—A. Yes.

Q. Due to what?—A. I haven't the crude prices for 1901.

Q. Due to what? Competition of the Atlanta Oil Company?—A. It is quite possible, as I do not show any variation.

Q. Cutting of prices by the Atlanta?—A. Yes. In 1901 there was a variation of from 11 cents to as low as 8.

Q. Yes, sir.—A. But there never was a 15-cent price there.

Q. What was the advance in Atlanta prices in 1902?—A. The advance was from 10 cents to 11½.

Q. And how did that correspond, if at all, with the billing price?—A. That was in harmony with an advance in the billing price—in the cost of oil.

Q. The billing price advanced from what to what during the year 1902?—A. I haven't the billing refinery prices. I have the price of crude and that shows——

Q. Isn't it true that the billing price advanced from 4 to 6¼ during that year?—A. That was what year?

Q. 1902.—A. (After referring to memorandum.) 1902? I don't seem to have the cost.

Q. You can get that during the recess?—A. Yes. I have got the basis of the crude.

Q. In the event that the billing prices advanced from 4 to
8339 6¼, would that account for an advance of 10 to 11½ cents in the price of refined?—A. Easily.

Q. And what was the variation or the advance in the price of crude at the wells during the year 1902?—A. From 80 to $1.10; it closed at $1.10.

Q. So that the price of crude advanced from 80 to $1.10, and the billing price (subject to verification during the noon hour) advanced from 4 to 6¼?—A. Yes; and the selling price—our market price at Atlanta—advanced from 10 to 11½.

Q. And that advance in the selling price from 10 to 11½ had not any relation, therefore, to competitive business whatever, had it?—A. None whatever.

The Examiner. That 80 to $1.10 is per barrel?

Mr. Rosenthal. Yes.

Witness. Yes; 80 cents to $1.10; 42-gallon barrel is the basis.

Q. These changes from 10 to 11½, or corresponding changes, were uniform throughout your entire territory, were they not?—A. Yes; uniform in accordance with the general markets at primary points.

Q. And were not confined simply to Atlanta?—A. No.

(A recess was here taken until 2 o'clock p. m., at which time the direct examination of the witness was resumed, as follows, by Mr. Rosenthal.)

8340 Q. This same witness Wootten testified, at Washington, that the Record Oil Company, doing business at New Orleans, was dominated by the Standard Oil Company, but posed as an independent company. What do you know about that, Mr. Collings?—A. I know all about it. There isn't any truth whatever in that statement, not a particle.

Q. What is the fact with respect to the Record Oil Company and its relations to the Standard?—A. It is a competitor of the most aggressive kind and character.

Q. Is it in any way controlled by or dominated by the Standard Oil Company?—A. It is not and never was.

Q. Is there now, or has there ever been, any business relation between the two companies?—A. Nothing more than occasionally we would sell them oil, and occasionally we would buy oil from them. They are a refinery and have certain grades of oil to sell. Certain grades of oil they do not make we sell sometimes, according to the——

Q. Who is the president of the Record Oil Company?—A. Thomas Anderson.

Q. Is he a member of the Louisiana State Legislature?—A. He is.

Q. Has he recently introduced a bill in the legislature for the purpose of regulating prices?—A. He introduced a bill in the last legislature of Louisiana regulating prices in Louisiana.

Q. For what purpose, as stated by him?—A. He stated openly before the committee that was looking into the character of this
8341 bill before it was passed, that it was not intended to injure any of the general business or commercial business of merchants in Louisiana, it was intended to regulate the Standard Oil Company. That is reported in print in the proceedings before the committee.

Q. The Record Oil Company, then, as I understand you, is entirely independent of the Standard?—A. It is.

Q. The Standard hasn't anything to do with fixing its prices or controlling its prices in any way?—A. It has not.

Q. Nor with the conduct of its business?—A. It has not anything to do with the conduct of its business.

Q. Do you remember the Dixie Oil Company?—A. Yes.

Q. About when did that begin, and where?—A. My recollection is that they were in business in New Orleans. I can't remember the exact date. I think probably it was in 1901 or 1900, somewhere along there.

Q. And besides doing business in New Orleans, where else did that company do business?—A. I think they were at Savannah and Montgomery and Mobile and two or three other places. I can't recall right now.

Q. The Dixie Oil Company was a competitor of the Standard Oil Company?—A. Yes. Owned by S. P. Shotter & Company, the naval stores.

Q. Mr. Wootten testified in that connection that when the Dixie Oil Company began doing business at Savannah, New Orleans, and Birmingham, the prices of the Standard Oil Company were heavily re-

duced, and that the Standard continued to sell at such reduced prices until it purchased the Dixie in 1899, when the New Orleans and
8342 other prices were advanced. What do you say with respect to that statement?—A. If there were reductions at New Orleans and the points where this concern was operating it was due to their cutting prices. The fact is, I think they started that business purposely to hurt the Standard Oil Company.

Q. What makes you think that?—A. We had been rivals in the naval stores business and they were trying to drive us out of the naval stores business, and because we wouldn't go out, they said they would go in the oil business and do us all the damage they could in that business. Their effort was to force us down at every point and make us lose all the money they could at every point. They would make us lose enough money, they said, to make us give up the naval stores business.

Q. As a matter of fact were the prices low in 1897?—A. I don't know that I have any prices in 1897. I couldn't say about that unless I referred to my records.

Q. Isn't it true, as you now recollect it, that the year 1897 was a year of low prices generally in oil as well as in all other commodities?—A. That is correct.

Q. That is the basic year taken by the Bureau of Corporations.—A. Yes. I think that is borne out by the facts, that prices were lower. Yes, low prices prevailed generally in 1897.

Q. Low prices prevailed generally in 1897?—A. That is correct.

Q. And the prices advanced in 1898 and 1899, did they?—A. I think so.

Q. Generally?—A. I think that is the record, sir. Yes. Prices went up in 1898 and 1899, that is right. Generally, I think, the markets advanced in 1898 and 1899.

8343 Q. Was there also a general advance in the price of crude in 1897, covering particularly the years 1898 and 1899?—A. (After referring to memorandum.) No. I haven't a record of crude prices in 1898 and 1899.

Q. My recollection is that your testimony on the crude prices this morning covered that.—A. That was 1895 and 1896. Yes, sure I have them here. I must have missed this sheet.

Q. What is the fact with respect to the advance in the price of crude during the years 1898 and 1899 as compared with 1897?—A. The price opened in 1898 at 41 crude, and advanced and closed at 75, closed the year.

Q. And in 1899?—A. In 1899 it opened at 75 and went to 112 and closed at 112, showing a continuous advance in those two years from 41 to 112.

Q. And have you the advance, if any, in the price of crude in the early part of 1900?—A. No, I haven't the crude prices in 1900.

Q. Did Wootten take charge of the Dixie Oil Works, New Orleans, in the spring of 1899, after the Dixie was purchased by the Standard?—A. I think he did; that is my recollection.

Q. And what was your policy with respect to the conduct of the business of the Dixie at New Orleans after that?—A. The main thing we were interested in was to get rid of the large stocks of oil that they had, special brands of their own, and collect up the accounts. They had out quite an amount of business on their books that was very slow to get in. Furthermore, they had created a demand for certain of their brands, trade-marks, which we used for a while. My recollection is that we didn't run that business very long—just long enough to get it cleaned up, to get rid of their stocks.

8344 Q. Was it part of your policy, as he testified, to have him go after simply dissatisfied Standard Oil trade?—A. It was not. But, naturally, he confined himself largely to the trade that they had already been selling. He didn't disturb our trade, because he easily could handle the business that came to him much easier and at much less expense.

Q. How long did you continue to run the Dixie?—A. My recollection is that we ran it about ten to twelve months, something like that. It was not long, I know, considering the magnitude of their business. They had a very large business; that is, large stocks of goods.

Q. Wootten was finally discharged, was he not, as an employee of the Standard Oil Company?—A. Yes.

Q. Do you know why?—A. Yes. Out of intemperance, intoxication, and he had a drug habit of some kind. I don't know what kind of dope he took. We put up with it for a long while and gave him an opportunity to go off and straighten himself out, and even after that he went wrong again. He was a dope fiend, so I had always heard.

Q. Did you have in your employ a man by the name of Wofford?—A. Wofford; yes.

Q. He was employed in the Birmingham territory?—A. I think he was employed in the Birmingham office as a clerk of some kind.

Q. He testified at Washington also, and among other things he testified to was the following: That when a competitor's salesman would leave Nashville in the Birmingham territory, a Standard salesman would follow him from Nashville until he reached the

8345 Birmingham territory, and then that a salesman from the Standard's Birmingham office would take his place and would follow the competitor's salesman around through the Birmingham territory, staying with him and preventing his getting orders by cutting prices. What do you say with respect to that?—A. I say that I don't recall any such instance of one of our salesmen being sent out to follow the competitor's salesman from Nashville and then communicate with Birmingham and getting a Birmingham man after him; I don't recall anything of that sort.

Q. What would you have had to do with anything of that kind if it had existed?—A. If it had existed, the salesmen in making their daily reports, a copy of which comes to my office—if anything of that kind had appeared, and naturally that would be what the salesman would put on his report, what he was doing that day—it would be

brought and laid on my table if anything of that kind was on it; it would be considered a matter of importance for me to look into.

Q. Would you have any control or did you have any control over the salesmen that traveled out of Nashville?—A. I did not directly, but if they did anything out of the regular line of their work, it would show on the report and my attention would be called to it.

Q. By the way, was Nashville in the Birmingham territory?—A. It was not. It was at that time an agency.

Q. If a Nashville salesman went into the Birmingham territory in the conduct of his business, would that have been called to your attention?—A. It certainly would.

Q. It would come under your notice?—A. Yes.

8346 Q. In what way?—A. The salesman's report would be brought and laid on my desk.

Q. Do you remember anything of that kind ever having taken place?—A. I do not.

Q. Was there any practice of that kind that you were cognizant of?—A. There were certain occasions when that was done.

Q. When what was done?—A. Send a salesman out to follow up a competitor's salesman.

Q. Tell me about that, please.—A. About the only instance that I can recall where we were forced to that extremity was over in the Carolinas. The Red "C" Oil Company at Baltimore had a way of shoving men out every once in a while. They didn't do any regular business and had no regular stations or quarters in the Carolinas, they had no agencies or methods of delivery there, and their system was sporadically to run a man out and try and make up carload orders at different places. That didn't prevail elsewhere. Therefore we didn't have to resort to having the men go out and try to find out what these men were doing.

Q. Wofford testified that your salesmen that went out in that way would follow up the competitor's salesmen and cut prices in order to get the competitor's business away from you. What have you to say with respect to the authority of your salesmen ever to cut prices?—A. The salesmen did not have general authority to cut prices. The only way they could make any change in price was to submit their recommendation to their superior officer as to what was necessary to do in

8347 the way of making prices or meeting prices, and their superior officer would in turn submit the recommendations to me. Then I would wire them what to do. But the salesmen had no authority. Not only that, but the special agent himself under whom he was working would not have authority to change our markets.

Q. Or to cut the price?—A. Or to cut prices.

Q. Do you know the town of Leighton, Alabama?—A. Very well.

Q. Did the Standard Oil Company do business there?—A. In a very small way. We sell a few merchants there. I don't think there are over three or four there. It is a little bit of a town, a very small town.

Q. It is a small village, is it not?—A. Yes, it is a village. Probably three or four merchants there.

Q. Wofford testified that the General Oil Company of Memphis once shipped a carload of oil to Leighton, Alabama, and that in order to meet that competition the Standard, through a Leighton merchant, retailed oil at 10 cents a gallon, the prevailing retail price then being 15 cents. Did anything of that kind ever take place to your knowledge?—A. Not that I ever heard of. I don't believe a carload of oil could be made up in Leighton; it isn't big enough. In disposing of 60 or 75 barrels of oil, half of it would leak out before they could dispose of it.

Q. Wofford also testified that the Southeastern Oil Company was started at Birmingham in February, 1903, and the Standard's tank-wagon price was cut from 14 to 11 cents, and that in June, 1904, the Southeastern was forced to sell out, and did sell out to the Standard. What are the facts in respect to that?—A. I couldn't say exactly about those prices, but if there was a reduction in the price it
8348 was not on account of the Southeastern Oil Company. It may have been a general reduction in the markets.

Q. Were there any reductions in Standard tank-wagon prices at Birmingham in 1903 and 1904?—A. (After referring to memorandum.) In 1903 the prices did decline. What does he say it declined there?

Q. From 14 to 11 cents.—A. It didn't go to 11 cents. It went to 12 cents. That was the lowest.

Q. It fluctuated from 14 cents on January 1, 1903, to 12 cents in midsummer, did it not?—A. Yes; and that was on account of a decline in the general markets. That was a general decline.

Q. And when did it again advance to 14 cents?—A. It advanced along in the autumn.

Q. In November?—A. Yes. The latter part of November it was 14 cents, but that was exactly in line with an advance in the general markets, the primary points. They advanced 2 cents.

Q. On January 1, 1904, what was the price?—A. The price was 14 cents.

A. And when was that reduced, if at all?—A. In April, it was 13—a 1 cent reduction.

Q. Yes, sir. A. And that was in harmony with the general primary markets.

Q. And how long did it continue at 13 cents?—A. It continued until January, 1905.

Q. As I understand you, then, the fluctuations that you have just told us of corresponded with the general advance and decline throughout the entire territory?—A. That is correct.

Q. And also the changes in the billing prices?—A. The
8349 changes in the cost at the primary markets.

Q. Wofford also testified that when the G. T. Wofford Oil Company was started at Birmingham, in 1905, the Standard cut the tank-wagon price of oil from 11 to 9½ cents, and followed up the

tank wagon of the Wofford Oil Company. First, what have you to say with respect to his statement concerning this cut in price?—A. Why, it sounds very low to me. I will see, however.

Q. In 1905.—A. In 1905.

Q. Was the price reduced from 11 to 9½ cents at any time that year?—A. One minute. I think I have the Birmingham prices. What year is that?

Q. 1905.—A. What did you say the price was, 13?

The following question was read: "Was the price reduced from 11 to 9½ cents at any time that year?"—A. No; it was not.

Q. What was the range of price during the year 1905 at Birmingham?—A. From 13 cents to 11½; that was the lowest.

Q. January 1st it was 13?—A. Yes.

Q. January 25th, 12½?—A. Yes.

Q. And February 9th to December 31st, 11½?—A. That is right.

Q. So that during the year 1905 the price in Birmingham never reached 9½ cents?—A. It did not. I thought not when you mentioned it. That sounded rather low in that year.

Q. The reduction from 13 to 11½ cents was due to what?—A. To a decline in the primary markets and a general decline in the markets throughout the field.

Q. Did the market generally throughout your territory decline a cent or a cent and a half that year?—A. A cent to a cent and a
8350 half. The refinery prices declined 1 cent and our selling prices declined from a cent to a cent and a half.

Q. Is it true that the refinery prices declined from 5½ to 4 cents?—A. From 5½ to 4½.

Q. And while there was a reduction of a cent to a cent and a half in Birmingham during the year 1905 that reduction, as I understand you, was general throughout the entire territory?—A. It was.

Q. Mr. Wofford also testified that the Standard's prices in towns outside of Birmingham were higher than in Birmingham. What is the fact about that?—A. You would have first of all to give me the towns; I couldn't tell you offhand. But naturally in those small towns, say within a radius of 50 or 100 miles of Birmingham, it costs more money to do business.

Q. His testimony was that it was higher in these small towns contiguous to Birmingham than in Birmingham, but only just enough higher to keep the Birmingham Standard competitors from selling their oil in these small contiguous towns. What is the fact concerning that situation?—A. He has in mind no doubt Pratt City, Bessemer, and points like that, Brockton and towns within a radius of 100 miles, we will say—small towns. The fact is we put bulk stations in at those places, received our oil in tank cars just as we did at Birmingham, and many of them have the same rate from the refinery that Birmingham had.

Q. The same freight rate you mean?—A. The same freight rate. So that the cost on a freight basis would be practically about the same. But we would naturally expect to get a little more margin

out of those towns on account of the increased cost of marketing at the small town. But that would not be high enough
8351 probably to stand the freight rate from Birmingham, which would probably be a cent and a half to 2 cents a gallon.

Q. Is there an increase in cost to the Standard in marketing in the small towns as compared with the large?—A. As a rule, yes; it costs more money.

Q. Due to what?—A. Due to the bad roads and the small gallonage they put out and the length of time it takes a wagon to dispose of a wagonload, the territory they have to cover, the scattered trade, and the merchants don't take as much oil from the wagon per merchant as they do in the large towns, and they are much farther apart necessarily.

Q. That is, the larger the volume of business within a given radius the more economically can the business be handled?—A. That is correct.

Q. Therefore the lower the price by virtue of that?—A. Yes.

Q. Do you know a man by the name of H. C. Boardman?—A. Yes.

Q. He testified as a witness for the Government at Washington in this case. Was he ever in the employ of the Standard Oil Company?—A. Yes.

Q. Do you remember about when?—A. I think it dated back probably to 1885 or 1886.

Q. Early eighties, wasn't it?—A. Yes.

Q. He started as an office boy?—A. Yes; he started as an office boy.

Q. He testified that away back in the early eighties, when J. T. Thornhill and Blodgett, Moore & Company, independent dealers of oil, came to Augusta, the Standard at once initiated a price cut. What have you to say with respect to that?—A. Well, I
8352 couldn't say in regard to the business back of 1886, but my recollection is that in 1886 Boardman was an office boy in the Augusta office.

Q. Merely an office boy?—A. That is all.

Q. As office boy, would he have known anything about the Standard initiating a price cut against a competitor?—A. He would not; could not.

Q. Or have had anything to do with that?—A. He would not.

Q. He also testified that in 1898, when Crew, Levick & Company came into Augusta to do business, the Standard at once instituted a price cut. What is the fact in regard to that?—A. That is in Augusta?

Q. In Augusta in 1898.—A. 1898? What is that now? Read that.

Q. Boardman testified that when Crew, Levick & Company came into Augusta to do business in 1898, the Standard initiated a price cut for the purpose of driving them out of business there. What is the fact about that?—A. The facts are that our price January 1, 1898, at Augusta, was 8 cents, and it advanced in July to 8½, where it remained the balance of that year.

Q. So that instead of there being any price cut during the year 1898 in Augusta, the fact is that the price advanced a half a cent?—A. That is correct, sir.

Mr. KELLOGG. What was the price in 1897?

WITNESS. In 1897 at Augusta?

Mr. KELLOGG. Yes.

WITNESS. I don't seem to go back of 1898. No; I haven't got that.

Q. No, you only have the 1898 prices.—A. I have some later prices, Augusta, 1896.

Q. Well, you haven't the 1897 prices, have you?—A. I have not. I have got Augusta for 1907.

Q. Did you ever furnish any agent or employee of the Standard Oil Company during all the years you have been in charge, any
8353 money with which to pay employees of manufacturing or other concerns which were using oil——A. I never did.

Q. So as to bring about in that way the more favorable use of the oils of the Standard Oil Company?—A. I never did so, and never authorized anyone else to do so.

Q. Did you ever know of that being done?—A. I never knew of any.

Q. Mr. Boardman testified that he started in business at Atlanta in July, 1906, and that thereupon the Standard Oil Company cut the price at Atlanta from 12 to 9½ cents. What are the real facts?—A. What year is this?

Q. 1906; July.

Witness refers to memorandum.

Q. In the first place, did the Standard Oil Company cut the price at Atlanta when Boardman started in business?—A. They did not.

Q. What are the facts with respect to price movement at Atlanta during the year 1906?—A. The selling price opened at 12 cents (that is January) and declined in August to 11 cents.

Q. Due to what?—A. Due to a general decline in the primary markets the same year, the same period.

Q. Do prices usually decline in midsummer?—A. Yes; that is, the refineries generally have a large accumulation of oil and they are willing to sell at lower prices in the summer, as a rule, than they are when the heavy consuming season sets in.

Q. And the decline here was from 12 cents in January to 11 cents in August?—A. In August; that is right.

8354 Q. How long did that price prevail?—A. It prevailed throughout the year.

Q. Did it get below 11 cents?—A. Not that year.

Q. Then, it is not true that the price was dropped as soon as Boardman opened up business at Atlanta from 12 to 9½ cents, or anything like that, is it?—A. No; the decline was a general one in accordance with the decline at the refinery. The refinery's price declined from 5¼ to 4¼, just a cent a gallon.

Q. The price throughout the entire territory declined accordingly?—A. Yes; the general market declined a cent a gallon.

Q. Where is Denmark, Georgia; how far from Atlanta?—A. My recollection is it is in southeastern Georgia. It is such a small town that really it is—I've heard of it and I have an idea in a general way that it is somewhere down in southeastern Georgia.

Q. How many inhabitants has it; 13?—A. I know it is extremely small. It could not be more than that. I know it is a town that you——

Q. Have you looked it up?—A. Yes; I've looked it up.

Q. How many inhabitants did your search reveal that it had?—A. I tried to find the place, I couldn't just recall it, and I looked in Rand & McNally's Atlas, and my recollection is they show a population of about 10 or 12, somewhere around that, or 15. It is so small that——

Q. You found it in Rand & McNally's?—A. I think it is in Rand & McNally's Atlas; I happened to locate it. Somebody
8355 asked me if I had a station in Denmark, Georgia, and I said No. He said: "Well, your competitor has got one there." I said: "Then he knows more about Georgia than I do."

Q. That is one of the places that Mr. Boardman testified that the Standard Oil Company had engaged in fierce competition with you.—A. I doubt if there is a single merchant in the town.

Q. And that when he began doing business there on an extensive scale that you at once dropped the price from 15 to 11½ cents.—A. We couldn't have done that, because we had no market there. There is no market at Denmark.

Q. Then, to say the least, he is probably mistaken about that warfare that took place in Denmark?—A. Yes. That is among other things that he made mistakes about.

Mr. KELLOGG. You don't overlook many towns, do you?

WITNESS. If I did, I wouldn't hold my job very long. If a competitor could find a town big enough to put a distributing station in and I didn't know the town when they asked me, "Do you know anything about that town?"——

Mr. KELLOGG. I thought you didn't overlook any town.

WITNESS. They wouldn't have much use for a man that wasn't a little better up on his territory after handling it for twenty-odd years.

Q. This same competitor Boardman testified that in 1907 the Standard Oil Company was selling oil at Augusta at 9 cents, while at other places in the Augusta district it was selling at 16 cents. What is the fact about that?—A. I don't think we ever sold oil at 9 cents in Augusta—that is, during the period that he refers to.

8356 Q. In the first place, then, you never sold oil during the year 1907 at 9 cents——A. No; I don't think so.

Q. At Augusta?—A. I will look and see. I have got the prices here, I think.

Q. What were the 1907 prices?—A. The lowest price we had in 1907 at Augusta was 10 cents.

Q. The lowest price you had in Augusta was 10 cents?—A. That is, for the regular oil that we sold there, our Water White oil.

Q. Now, what are some of the other stations around Augusta?—A. The nearest station to Augusta, if I remember correctly, is Thompson; the next is Waynesboro. I think one is on one road and the other is on the other. They are within 40 or 50 miles.

Q. And what were the 1907 prices at those stations?—A. The price at Waynesboro was 11½.

Q. While it was what at Augusta? 10?—A. 10, and at Thompson it was 11½, the same as at Waynesboro.

Q. How do you explain this differential?—A. The difference in the cost from the refinery. The freight to Augusta is less than to Waynesboro or Thompson—about that amount.

Q. And how about the difference in gallonage?—A. Oh, well, of course at these little towns the cost of marketing is higher on account of very much smaller business. Those towns would probably do about 1,500 barrels per annum, at the outside, or 1,000.

Q. Do you know where the town of Washington, Georgia, is?—A. Yes, that is in the vicinity of Augusta, not so very far.

8357 Q. Mr. Boardman testified that about ten years ago, when the Red "C" Oil Company sold a carload of oil at Washington, Georgia, that he arranged with a retailer named Almond to sell oil of the Standard Oil Company at Washington, Georgia, for 5 cents a gallon. What do you say with respect to that statement?—A. Well, I say that is not true.

Q. Is that all you can say about that?—A. Yes, first of all. It would be absurd to say that we would make a price of 5 cents at a little interior town like that. Furthermore, I can't believe that the Red "C" Oil Company ever sold a car of oil at that town. They kept out of Georgia for very good reasons. Their oil would not stand the Georgia State requirements as to test. The test in Georgia is very severe. It requires an oil of extra high fire test to pass inspection, and they didn't carry that grade of goods, and that is the reason, I think, they kept out of Georgia.

Q. How much of a town is Washington?—A. Oh, it is about the size of Thompson or Waynesboro. They would handle in a year probably a thousand barrels of oil. Does he say what month in the year they sold that car of oil?

Q. No.—A. A carload of oil would last them over a month, if everybody in a town like that bought from them.

Q. That is, if every person in the town bought from them.—A. If every merchant in the town used Red "C" oil, it would take them a month or so to use up a carload. Therefore, I don't believe there was ever a carload of oil sold there by the Red "C" Oil Company. I know we never made a 5-cent price there. That is absurd.

8358 Q. Could Boardman have made a 5-cent price there without your knowledge?—A. He could not. He was only a subagent

Even if he had been a special agent he would not have had that authority. No one would have authority to make any such price.

Q. That could only have been done on an authorization from you? A. Yes; and I don't think anyone would dare to have the nerve to propose to make a retail 5-cent price anywhere—that is, to make it to me.

Q. Did you ever authorize it in that connection?—A. I did not.

Q. Or ever hear of that being done?—A. Never heard of it.

Q. Did you ever know, in your thirty years' experience, of a 5-cent retail price?—A. I have never heard and have never known of such a retail price anywhere.

Q. Boardman is probably mistaken about that?—A. As I said, he was gifted in that way—making mistakes.

Q. He had the gift of being mistaken occasionally?—A. Yes. Mistook other people's property for his own, too, sometimes.

Mr. KELLOGG. What is that?

WITNESS. He mistook other people's property for his own.

Mr. KELLOGG. Who did?

WITNESS. Mr. Boardman.

Q. Do you know a man by the name of Fehsenfeld?—A. No.

Q. F-e-h-s-e-n-f-e-l-d.—A. No; I never knew of him.

Q. Do you know of him in the trade?—A. Yes; I heard of him some years ago. I think he traveled for the Red "C" Oil Company.

Q. Yes; connected with the Red "C" Oil Company, was he not?—A. Yes; salesman.

8359 Q. Mr. Fehsenfeld testified that prior to 1892, while the Red "C" Oil Company was selling to Ferguson & Miller at Greenville, South Carolina, the Standard price there at Greenville was 11 cents, and at Spartanburg, where the Red "C" Oil Company had no customers, the Standard price was 13½ cents. What do you say with respect to the truth of that statement?—A. I think he must refer to the barrel price at one place and the tank-wagon price at another, because we never maintained any such differential between those two towns on tank-wagon oil.

Q. Might there be that difference between the tank-wagon price at one place and the barrel price at another?—A. Yes.

Q. Just explain that, will you, please?—A. You would have a barrel price to the jobber of 13½. Does he say 11 tank wagon?

Q. 11 cents and 13½?—A. Well that is 2½ cents; that is the value of the barrel.

Q. That is, there might be that difference between the tank-wagon price at Greenville and the barrel price at Spartanburg, or vice versa. A. Be just about that; that will be the correct differential between the tank wagon and the barrel. That is what he means.

Q. You are familiar with prices in that territory?—A. I am.

Q. That is within your territory—Greenville?—A. It is not now; it was then.

Q. At that time or ever while it was within your territory, was there such a differential between Greenville and Spartanburg?—A. There was never that difference.

Q. On tank-wagon oil or on barrel oil?—A. No; there was never that difference.

8360 Q. What has been the differential between those two towns?—A. There may have been a differential of a half a cent at some time. That would not be unusual. Can't always keep them exactly in line.

Q. Fehsenfeld also testified that the Red "C" Oil Company was compelled to withdraw from the State of Georgia because of the operation of the inspection laws there and that the inspectors were appointed only at the large distributing stations of the Standard Oil Company. What have you to say about that?—A. We had nothing whatever to do with the appointment of inspectors.

Q. By whom were they appointed?—A. Appointed by the State board of inspectors.

Q. Had you anything to do with the State board?—A. Nothing whatever. It is quite natural that they would appoint men at the large towns. It wouldn't pay a man to hold the office of inspector at a small town where no oil was received—that is to say, where there was not a bulk station.

Q. That is to say, it was quite natural that the inspector should be stationed at a large station of the Standard Oil Company?—A. At points either where we had stations or the competitors had them.

Q. Why did the Red "C" withdraw from the State of Georgia, if you know?—A. I always understood it was because——

Mr. KELLOGG. Well, do you know what you are talking about?

Mr. ROSENTHAL. You go ahead and answer.

WITNESS. Of course I know.

Mr. KELLOGG. If you know what you are talking about, go

8361 ahead and testify.

WITNESS. I know that their oil was rejected. That is sufficient evidence that the oil was not up to the required test. It was rejected a number of times and they had to take it out of the State.

Q. Because of what?—A. Because it didn't stand the required test.

Q. Did you ever authorize or know any of your salesmen threatening in any way dealers of oil, that they would destroy their business in the event that they bought from the Red C Oil Company?—A. Never heard of such a thing. Never did such a thing. If it had ever come to my knowledge that any employee had made such threats to a merchant I would have discharged him. I consider that would cause us to lose business more than any other one thing that a man could do.

Q. Fehsenfeld testified that where they sold oil in carload lots the Standard Oil Company would initiate a price cut in those towns?—A. Would do what?

Q. Would initiate a price cut in those towns. What is the fact with respect to that?—A. The facts are that we simply met their prices, and in some cases we didn't find it necessary to go as low as they went.

(Mr. Kellogg requested the witness to produce his correspondence with Mr. Pauley during the time Mr. Pauley has been employed at Birmingham and in the southern district; also to produce all his correspondence with Mr. Charles Kercher, Mr. R. N. Reed,
8362 special agent, at Atlanta; also all his correspondence with his special agent since he has been the vice-president or general manager, or whatever his position has been at Covington.)

(An adjournment was then taken until the morning of Tuesday, September 8, 1908, at 10.30 o'clock.)

8363 ROOM 715 CUSTOM-HOUSE, NEW YORK CITY,
Tuesday, September 8, 1908—10:30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison, Mr. J. Harwood Graves; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. F. L. Crawford, Mr. Douglas Campbell, and Mr. W. Cleveland Runyon.

C. T. COLLINGS, recalled, and his direct examination resumed, as follows:

By Mr. ROSENTHAL:

Q. Do you know of a firm by the name of O'Connell & Shea at Terre Haute, Indiana?—A. I do.

Q. What was their business?—A. They were in the oil and coal business.

Q. Competitors of the Standard Oil Company?—A. Yes, sir; they were competitors in the oil business.

Q. Do you remember the Hamilton Oil Company that did business in Terre Haute?—A. Yes.

Q. Mr. Shea testified that he stopped buying in November, 1896, from the Standard Oil Company, that the Hamilton Oil Company was put in Terre Haute shortly thereafter, in January, 1897, after certain threats had been made against him, and that the Hamilton Oil Company began selling from a cent to 1½ cent above the
8364 wholesale price to retailers, namely, at 8 cents a gallon, while O'Connell & Shea had been selling Pennsylvania oil at 15 cents a gallon and Ohio oil at 10 cents a gallon, and that in January, 1897, O'Connell & Shea began wholesaling oil by tank wagon at 6½, and that the Standard thereupon reduced its price, from 6½ to 5 cents wholesale, and the Hamilton Oil Company reduced its price from 8 cents to 6 cents retail. What have you to say with respect to that?—A. That occurred, you say, in 1897?

Q. Yes, sir; so Mr. Shea testified.—A. I did not have charge of that part of the business in 1897.

Q. Where were you located at that time?—A. I was in Louisville at that time.

Q. You are not familiar with this situation then, either pro or con?—A. Not just at that particular time.

Q. Do you know what the Standard's tank-wagon prices in Terre Haute were in 1897? Have you a record of that?—A. I think I have the record. (Referring to memorandum.) In 1897?

Q. Yes, sir.—A. The tank-wagon price was 7 cents.

Q. At Terre Haute?—A. Yes, sir.

Mr. KELLOGG. Let me see the memorandum, Mr. Collings testifies from.

(Witness hands sheet of paper to Mr. Rosenthal, who in turn hands it to Mr. Kellogg.)

Q. Are you familiar with that O'Connell & Shea competition in and around Terre Haute during those years?—A. Later on, after 1898, I was.

8365 Q. By whom were those price cuts initiated?—A. By O'Connell & Shea.

Q. How do you know that?—A. That was what the Indianapolis agent reported to me—that he was losing business from time to time because of lower prices from tank wagons.

Q. A man by the name of R. T. Cooke testified in this case that at one time, from 1894 to 1898, he was in charge of the station at Columbus, Indiana, and that he, during part of that time, received lists of competitive shipments from an employee of the Pennsylvania Railway. Do you know anything about that, Mr. Collings?—A. I do not.

Q. Did your office furnish any money for such purpose?—A. It did not.

Q. Or were you advised by Cooke, or anyone connected with Cooke, that he was doing anything of that kind?—A. I never heard of it. He never advised me.

Q. Was there any practice in your territory of getting information of that character from railway employees?—A. Not that I ever heard of.

Q. Was any money furnished by your office for any such purpose?—A. No, sir.

Q. Do you know of anything of that kind being done?—A. No; I never heard of it. No money was ever furnished that I knew of.

Q. Did you know of anything of that kind being done in your territory?—A. I do not.

Q. This same man Cooke testified that the Domestic Oil

8366 Company, a peddling concern, selling oil in the square can, was doing business as an independent company at Indianapolis in 1903; that it was started by one Williams, and that Cooke sold the Brooks oil plant, under instructions from you, to Williams, and that Mr. Wilson told him that the Domestic Oil Company was a Standard Oil enterprise, and that since 1905 it has been operated as a can

department of the Standard Oil Company. What have you to say with respect to that, Mr. Collings?—A. Well, that peddling outfit—those can wagons—did belong to the Standard Oil Company.

Q. What were the facts in connection with the institution of that?—A. The facts were that the oil business at Indianapolis for some two or three years back had gradually shown a shrinkage, notwithstanding the fact that the town had been increasing in population, and in line with other towns it ought to have shown an increase; and on careful investigation we found that the electric light and gas companies were rapidly increasing their business and cutting out the oil business, and that this condition was due to the high price of illuminating oils charged by the dealers to the peddlers.

Q. What were they selling oil for at Indianapolis at that time?—A. My recollection is that they were selling a common, an ordinary oil called "Ohio" or "Indiana" oil at 15 cents a gallon retail and Pennsylvania oil at 20 cents retail.

Q. And what was your price to peddlers at that time?—A. Our price to the peddlers was 7 cents for the ordinary, common oil and 8 cents for Pennsylvania oil.

8367 Q. And they were selling that at from 15 cents up, at retail?—A. Yes; and gasoline in the same proportion. We made appeals to them several times, that it was affecting their business, the business of the merchants, that they could sell a great deal more oil if they did not exact such exorbitant profits. Our arguments did not have any effect, so we concluded that our business would continue to diminish if we did not, by some means, get lower prices to the consumers—make it an object to them to use oil.

Q. And for that reason you put in the Domestic Oil Company?—A. That was the reason.

Q. And that company did what was known as a square can peddling business in Indianapolis at that time?—A. Yes; full gallon measure.

Q. And how about the prices that the Domestic Oil Company charged after it started in business?—A. My recollection is that we started out with a price of about 3 to 4 cents, probably, over the tank-wagon price.

Q. That is the retail price?—A. Yes.

Q. On the part of the Domestic?—A. The price to the consumer from the can peddling department was 3 or 4 cents over what the merchants were paying for their oil. Of course the oil did not cost the peddlers as much as the oil cost the merchants, because they would generally get a lower price.

Q. What was your theory in having the Domestic charge 3 or 4 cents above the tank-wagon price?—A. We figured that that was a good nice big profit, a good fair profit for a merchant or a peddler to make.

8368 Q. How long did you continue the Domestic Oil Company there in Indianapolis doing that business?—A. Why, I think up to 1906. In 1906, I think, it was we sold the business, sold it out.

Q. You then sold the business out?—A. Yes, we then sold it to the Standard Oil Company of Indiana.

Q. Do you remember the Brooks Oil Company of Indianapolis, about 1898?—A. Yes.

Q. Was that company and its business purchased by the Standard Oil Company?—A. It was.

Q. About when?—A. I can not recall the date.

Q. Some time after 1898?—A. I think it was; it was after I went to Cincinnati.

Q. And did the Standard subsequently run the Brooks Oil Company?—A. Yes; they did for a while.

Q. For how long?—A. I should think two or three years.

Q. Did the Brooks Oil Company have any brands of oil?—A. Yes; they had some lubricating oil brands, but their most important and valuable brand was a brand they used on their illuminating oil. My recollection is it was Brooks' White Seal.

Q. Was that of any value to the Standard?—A. Yes; they had established a trade on that brand, on that mark, and it was of value.

Q. For how long after its acquisition did the Standard continue to run it, and why?—A. Well, we continued to run it because we wanted to find out for just what grounds, for what reasons, the
8369 trade favored this particular brand; and we gradually convinced this trade that our oil, under our own brands, was just as good, if not better in some cases, than the oil they had always bought under this brand, and gradually diverted the trade to our own brands.

Q. Do you remember the firm of Scofield, Shurmer & Teagle?—A. I do.

Q. Of Cleveland?—A. Yes.

Q. Was the Brooks Oil Company used for the purpose of fighting that firm?—A. They were not; no.

Q. Was there any relation between the purchase of the Brooks Oil Company and Scofield, Shurmer & Teagle?—A. There was not.

Q. Over how wide a territory did the Brooks Oil Company do business?—A. Indiana, Illinois, and part of Ohio.

Q. And they had a substantial business throughout that territory?—A. Yes.

Q. Which was acquired by the Standard?—A. Yes.

Q. And what do you know about the purchase of the Vincennes Oil Company, at Vincennes, Indiana?—A. My recollection is that that was——

Q. How long did you continue to operate the Vincennes?—A. I think about three years.

Q. And did they have any brands of oil that you continued to sell under their old trade-mark names—trade names?—A. Yes, I think they had one or two brands.

Q. This same man Cooke testified that late in 1903 and early in 1904 the Standard Oil Company prices at Birmingham, Alabama,

were 12 and 13 cents, and that the prices at the Birmingham
8370 substations ranged as high as 17½ cents, and that the difference between the Birmingham and the Birmingham substation prices was due to the competition of the Birmingham Oil Company, at Birmingham, Alabama. What have you to say with respect to that, and with respect to the prices, the verity of the prices, as stated by Mr. Cooke?—A. Do you mean——

Q. Have you those prices? Take the Birmingham price in 1903. Was it 12 cents and 13 cents, as stated by Mr. Cooke?—A. Birmingham, you say?

Q. Yes.—A. What is the date?

Q. 1903.—A. In 1903 the prices varied from 14 to 12½ cents.

Q. 14 to 12½?—A. Yes; 12 cents—14 to 12.

Q. 14 to 12.

Mr. KELLOGG. That was in 1903.

WITNESS. Yes.

Q. And early in 1904, what was it?—A. 14 cents.

Q. Have you the price there?—A. Yes.

Q. Well, say January 1, 1903, what was the price?—A. 14 cents.

Q. April 20. Give me the range of prices for 1903 at Birmingham. Have you got that there?—A. Yes. January 1, 14 cents; April 20, 13 cents; May 29, 12 cents; October 20, 12½; October 26, 13½; November 20, 14 cents.

Q. Did that 14 cent price, then, prevail from November to the end of the year?—A. Up to January 1st and after that; up to March 7 of the next year.

Q. The price was 14 cents, then, at Birmingham from No-
8371 vember 20 to March 7, 1904, was it not?—A. Yes.

Q. And then in March, 1904, what was the change?—A. It was reduced a half cent, to 13½.

Q. What was the next change in 1904?—A. April 4.

Q. What was that reduction?—A. Half a cent, making the price 13 cents.

Q. And how long did that prevail?—A. That prevailed until January 25, 1905.

Q. So that in the latter part of 1903 and in the first part of 1904 the Birmingham price, as I understand you, was 14 cents?—A. Yes.

Q. How about the alleged differential between the Birmingham price and the substation prices in and around Birmingham, and, if there was such a differential, how do you account for it?—A. Well, to verify strictly the differential I would have to have the names of the towns. I would say, in a general way, that in the smaller towns in the interior of Alabama the expense of operating them is much greater than in Birmingham, and some of them have a considerably higher freight rate from the refinery.

Q. Take Troy, Alabama, for example; is that one of the Birmingham substations?—A. It is.

Q. I think the testimony with respect to that was that the Troy price was 3 cents higher than the Birmingham price. How would

you account for that difference?—A. My recollection is that Troy was a commission station, and we paid quite a good commission there to have that station operated, and I am quite sure that the freight rate to Troy is much higher than to Birmingham.

8372 Q. A difference in freight, then, would in part account for the difference in price?—A. It would, undoubtedly.

Q. And what else would account for that price difference?—A. Extra cost for operating, on account of small gallonage.

Q. And there might also, I suppose, be other local conditions that would increase the cost?—A. The main thing is the freight, and the next to that is the excessive cost of marketing—handling it.

Q. Well, at Tuscaloosa, Alabama, for example, the price seems to have been 15 cents, and at Montgomery, Alabama, while the price at Birmingham was 14 cents. Was that difference due to the competition that you had at Birmingham and the lack of competition at Montgomery and Tuscaloosa?—A. I think not.

Q. What was it due to?—A. I think it is due to the—I do not know in the case of Montgomery that there is any additional freight, but I am sure that there is at Tuscaloosa, and those stations were not operated as cheaply as a station of the size of Montgomery.

Q. Do you remember a man by the name of Charles Kercher?—A. I do.

Q. He at one time was an employee of the Standard Oil Company, in charge of certain peddling outfits belonging to the Standard of Kentucky, was he not?—A. Yes.

Q. The Hamilton Oil Company at Terre Haute, the Paragon Oil Company at Decatur, Illinois, and of the Banner Oil Company at Springfield, Illinois. Is that right?—A. Yes; I recall those.

Q. A letter was introduced by the Government while Mr.

8373 Kercher was on the stand, the gist of which letter was an instruction from a man by the name of Stanley, in the office of the Standard of Kentucky, that he, Kercher, should confine his efforts to get business to the customers of O'Connell & Shea in Terre Haute and to the dealers getting their supply from the Merchants' Tank Line Company at Decatur and from the customers of Solle Brothers at Springfield. Now, take up first the instruction with respect to getting the customers from O'Connell & Shea at Terre Haute. Why were those instructions given, if you know?—A. Well, I can say in a general way that in the operation of these peddling outfits we desire, as far as possible, to avoid antagonizing the merchants who are buying oil from us; and, naturally, we would not solicit consumers who were buying their oil from those merchants if we could help it.

Q. The business that you were after was the business that you did not already have, I suppose?—A. Well, it was business that we had had through the merchants that bought of us, but who had been taken away from us by these peddlers getting in and selling a little cheaper than the merchants were selling.

Q. And these peddling outfits were established by you, then, as I understand it, for the purpose of making an effort to get back that

business?—A. Yes; business that we had lost through the peddlers—through the competition of the peddlers.

Q. And at Terre Haute, Indiana, was there any other competing peddler except O'Connell & Shea at that time?—A. At Terre Haute; yes; I think there was, a part of the time, a competitor there besides—independent of them.

8374 Q. But the O'Connell & Shea firm was the principal peddling concern?—A. Yes.

Q. That had taken away your business?—A. They sold oil both to consumers and to the merchants. They had one—the business they did direct with the merchants they did under the name of O'Connell & Shea, and the peddling business they did under the name of the Terre Haute Oil Company.

Q. And were the facts the same with respect to Solle Brothers, of Springfield, substantially?—A. Substantially, excepting that they did not have a wholesale business.

Q. That is, they simply peddled the oil?—A. Strictly peddled.

Q. And had they gotten a great deal of your business away by price cutting?—A. They had.

Q. And your peddling concern was started at Springfield for what reason, then?—A. For the purpose of trying to regain that trade.

Q. And how about the Merchants' Tank Line at Decatur?—A. That was in about the same conditions excepting that the competitive peddler there, I think, represented the National Oil Company. The National had a plant at Decatur. I think it was called the Merchants' Oil Company—they operated it under the name of the Merchants' Oil Company. My recollection is they had a peddler who was selling a fancy oil, that is, so-called fancy, extra quality oil, that they were trying to get 5 cents a gallon more than the retail price for our oil, and it was affecting—some of that trade was affecting certain customers of ours who handled our fancy oil, as well as our common oil.

8375 Q. Were any instructions given, so far as you know, to Kercher that he was to hold himself out as the owner of the business conducted by him at Decatur, Springfield, and Terre Haute?—A. I can say that I never gave him any. I do not know whether anyone else ever talked to him on that subject.

Q. Did the Hamilton Oil Company at Terre Haute in 1899 or at any other time sell oil or gasolene at the tanks at cost price?—A. They did not, not after I had charge of it.

Q. Well, did you have charge?—A. In 1898 and 1899; yes, sir.

Q. From 1898 on?—A. Yes.

Q. So that from that time on you are prepared to say that neither oil nor gasolene was sold at the cost price at Terre Haute by the Hamilton Oil Company?—A. No; I don't think there was ever a year that the Hamilton Oil Company did not make money, and if they sold their oil at cost that would not have been possible.

Q. And, generally speaking, at what price did they sell to the consumer in comparison with the tank-wagon price?—A. From 2 to 3 cents was the usual average over the regular tank-wagon price.

Q. Take it in the case of the Hamilton Oil Company, for example, at Terre Haute; did you instruct Kercher to instruct the drivers to represent that the Hamilton was independent of the Standard?—A. I did not.

Q. Do you know of any such instructions being given?—A. I do not.

Q. Were those drivers advised by you, or your company, or anyone representing your company that the Hamilton was owned by the Standard Oil Company?—A. I do not think anyone outside

8376 of Kercher ever had anything to do with those drivers.

Q. How common is the practice, where a firm is doing a wholesale and a retail business, to operate the two branches under different names? I am speaking now of the practice in its relation to the oil business?—A. Well, it seemed to be quite common throughout the field that I looked after. The National and other companies had these different companies under different names than their own.

Q. So throughout that entire field, as I understand you, that was a quite common practice?—A. Yes. This case I have just mentioned at Terre Haute is one of them.

Q. That O'Connell & Shea case?—A. Yes.

Q. Kercher testified that the Hamilton Oil Company sold oil at Terre Haute under his (Kercher's) management at from a half to 2 cents above the wholesale price, which was lower than O'Connell & Shea's price. What have you to say concerning that?—A. Well, I do not believe they were ever as low as a cent and a half. There might have been sometimes a 2-cent differential.

Q. Between the wholesale and the retail?—A. Yes; but that was due to O'Connell & Shea cutting the price.

Q. What about the profits that O'Connell & Shea were making on their oil when the Hamilton Oil Company first came in there—were they high or low?—A. Oh, they were very high. They were selling oil at 15 and 20 cents that cost them 5 and 6 cents.

Q. They were making from one to two hundred per cent profit then, were they?—A. Fully; yes.

8377 Q. Well, that might be a ground for some exhibiton of bitterness on their part when the Standard actually competed, I suppose?—A. Yes, it hurt them, I guess, to have to lose that 200 per cent profit.

Q. Mr. Kercher testified that from 1899 to 1902 the Hamilton Oil Company was losing an average of $50 a week at Terre Haute. What is the fact with respect to that?—A. The facts are that there never was a year in my recollection that they did not make money. Some years they made $2,500 and over with three tank wagons.

Q. The fact then is just the contrary, so far as the $50 a week loss is concerned?—A. Yes. That is not true.

Q. There was a profit of $2,500?—A. Per annum.

Q. A year, some years?—A. Yes.

Q. Mr. Kercher testified with respect to the Merchants Oil Company, that the Merchants Oil Company, which was a wholesale concern connected with the National Refining Company, was selling to dealers at Springfield, Illinois, and also to Solle Brothers at that place, and that he, Kercher, directed his efforts exclusively to getting the trade of Solle Brothers, and for that purpose he reduced the price from a half to 1½ cents above the wholesale price, which netted to his peddling concern in Springfield a loss of about $40 a week. Now, what do you say concerning that?—A. That was a very small business over there, and I can not recall about those prices. I can not believe that they were as low as that—that there was ever such a small differential.

8378 Q. Did the Banner Oil Company, which was your peddling outfit at Springfield, ever lose any money there?—A. They may have lost some money, because they did very little business; that is, their output of oil was very small; but they never lost $40 a week, because if they had we would have closed them up.

Q. And what was the net result of the conduct of their business over there, from year to year, so far as loss was concerned?—A. I think on the whole they made a little money—just about enough to justify operating.

Q. Do you remember what your computation was at Decatur, Illinois, at the time that Kercher was with you?—A. Yes; I think there was a peddling outfit there operated by——

Q. A man by the name of Wagner?—A. Yes. It was reported by Kercher that this Wagner was working for the Merchants Oil Company, peddling for them. My recollection is that that is the reason we started that peddling outfit there, because the information that we had pointed to the fact that the Merchants controlled this peddler.

Q. Controlled the peddler, Wagner?—A. Wagner, and he was making inroads into the trade of the merchants who bought of us.

Q. And how about your consumption?—A. Our business was going down, our output declining.

Q. Was there any other class of customers then besides Wagner's customers that you were concerned with getting in Decatur at that time?—A. I think the trade that we have lost, and that we tried to regain through this peddler, was the trade that Wagner was supplying.

8379 Q. Do you know why those house-to-house canvassers—lady canvassers—were employed at Decatur?—A. Yes. My recollection is that the National were getting a fancy price for an oil they sold there under some fancy brand, and advertised it and published a great deal about it and gave away samples to consumers, sending people around to demonstrate its virtues over any other oil, and charged about 5 cents a gallon more for it. We had to put out some canvassers to show that our oils were all right and just as good as the competitors', notwithstanding they were 5 cents cheaper. We did not ask a fancy price for them.

Q. And that was the work performed by these half dozen lady canvassers at Decatur?—A. Yes; distributing circulars and advising and showing customers how to keep their lamps in good shape, how to make our oils burn in their lamps just as well as any.

Q. You say they were distributing circulars?—A. Yes; they were distributing. They always distributed circulars in every case where we found a competitor was making headway on the question of quality; they were distributing circulars to show that; and in the fall of the year, every year, we were generally sending them out, because the people would bring out their old lamps, with their old wicks left in there all summer, and would fill them up with oil and then complain that it did not burn well, when the wick was all gummed and choked up, having stood so long unused. We sent out circulars usually every fall, advising the consumer to clean the lamp and put in a new wick.

Q. I show you a circular, marked Defendants' Exhibit 90, and ask you whether that is one——A. Yes; that is.

8380 Q. Whether that is a sample of the kind of circulars that you sent out?—A. Yes; that is one we sent to the consumers; distributed it direct to the consumers and also through the merchants.

Q. By consumers you mean?—A. Families.

Q. And householders?—A. Householders. That was the main object, to get it into the hands of the householders.

Q. What was your purpose in sending out that circular?—A. So that we would not have any complaints, or that some other competitor would not come along and find that some one had been using our oil with an old dirty wick and complaining of it; and the competitor, of course, would say, "You are using that old oil of the Standard Oil Company. Let me put in a sample of my old, and I will show you." He would put in a new wick and clean up the lamp and burner, fix it, and start it, and of course he got a good result. They could have done the same thing with our oil if they had cleaned the lamp and put in a new wick.

Q. And is Defendants' Exhibit 91 another circular of a similar character, sent out by you to consumers of oil?—A. Yes. I think that is a more recent one—the last one.

Q. Those circulars, Mr. Collings, instruct the consumers of oil with great detail, do they not, just how to take care of their lamps?—A. Yes; we tell them as exactly and as briefly as we can how to get the best results, proper results.

Q. Tell them, among other things, to keep their ventilating holes free?—A. Keep them from being choked up and keep from using a wick that has gotten dirty, got gummed up.

Q. Have you had your attention called to the testimony of a man by the name of Hibbs?—A. Yes.

8381 Q. Who testified, among other things, that the Standard Oil canvassers fooled the customers in their ways of taking care of lamps?—A. I have heard of Mr. Hibbs; yes.

Q. And the dealers?—A. Yes.

Q. These circulars also got into the hands of dealers, did they not?—A. Yes; all of our customers—all the merchants who sold our oil—we supplied them with these, and asked them to hand them to the families who came there.

Q. Those circulars instruct dealers and customers as to the correct use of lamps, wicks, burners, and to do just exactly what Hibbs says you were not trying to do, do they not?—A. We never tried to do anything other than to carry out the suggestions that are used in those circulars. That is the only guide we ever went by in making lamp tests, or in endeavoring to improve the proper use of the oil.

Q. Hibbs testified that one of his tricks that he had been taught—one of six I think there were—tricks that he had been taught to fool the trade—was to raise the edge of the chimney, or bend the burner so as to get a draft that would give a poorer illumination. Do these circulars which you distributed so widely and promiscuously, give any exact instructions with respect to that very thing; and if so, will you point it out?—A. "Chimneys. They should fit"——

Q. What page are you reading from, and what exhibit number?—A. That is Exhibit 90, sixth page.

Q. Read it, please.—A. "Chimneys should fit the burners
8382 and be smooth and even on the bottom. Then no draught can get under the edge of the chimney and cause the flame to smoke. Select the proper one for your lamps. This is important."

Q. This same man Hibbs also testified that one of the other tricks that he had been taught in the making of the comparative test was to use a shallow bowl when he was showing the good qualities of Standard oil and a deeper bowl in showing the competitors' oil. Do these circulars give nay specific instruction with respect to that very thing, and if so, please point it out?—A. They were always instructed about the lamp. This in regard to lamps is on the second page.

Q. Read it, please.—A. "An important requisite of a good light is a good lamp, one with a wide, shallow bowl, so that the oil need not rise far to reach the flame. There are many that will suit your fancy. Buy a good one."

Q. So that, as a matter of fact, through that circular you were instructing your trade and customers to use a shallow bowl, and thus calling their attention to the fact that a deeper bowl would not give as good results?—A. It is very clear there.

Q. This same man Hibbs also testified that in making those experiments with a dealer he would trim evenly the Standard wicks and do just the contrary with respect to the wicks of competitors. Are there any instructions in this circular, and if so, on what page, with respect to that very thing, calling the attention of the trade thereto?—A. On the third page of this same exhibit we instruct—give the following suggestions:

"A wick is a pump to carry the oil from the lamp bowl to the
8383 flame. The wick acts as a siphon pump. It will in time become dirty and clogged, and unable to perform its work.

Unless a proper quantity of oil is delivered by the wick to the top of the wick tube, an unsatisfactory or poor light results, and this, even from the very best grade of oil in the market. Put in a new wick once every month; use the best wick you can get, one soft and loosely woven. Wicks are so cheap that the expense will be trifling. Wicking sold by the yard never gives good results. It is an inferior quality.

"How to trim a wick. Do not scrape it, this fills the burner with dirt. Cut it evenly across the top and slightly round the corners. Trim it very day. Never splice or piece a wick. A short piece of wick pinned or even sewed to another piece of wick or flannel has never secured good results in the way of light."

Q. Do you remember your company sending a peddling outfit to Vincennes, Indiana, about 1902? Did you have a special agent by the name of Robert Gunton at Evansville at that time?—A. Yes, we did. I do not remember about that peddling outfit.

8384 Q. Do you remember a concern being operated at Vincennes by a man by the name of Buck?—A. Yes; I think Buck operated there both as a wholesaler and as a retailer. I think he had a peddling wagon as well as a tank wagon to supply the merchants.

Q. Isn't it a fact, now that your recollection is refreshed by that name, that the peddling wagon which Kercher put into Vincennes in 1902 was put there because of the duel business that was being done by Buck?—A. Yes, if one was put there it was undoubtedly for that purpose. That was the usual policy.

Q. I call your attention also to certain other testimony of Kercher relating to the purchase of the peddling business of a man by the name of Flournoy, at Macon, Georgia. Do you remember that?—A. Yes, I recall that.

Q. The date seems to have been 1902.—A. I recall it.

Q. Will you give us the facts concerning that?—A. As nearly as I can remember, Flournoy was a merchant at Macon, Georgia, selling oil and other merchandise from his store, and he started this peddling business. He began to make inroads into the trade of the merchants at Macon, and they complained several times to us that Flournoy was taking away all their oil trade through his peddling wagons, and they finally——

Q. And he was doing what with respect to prices?—A. He was cutting prices. And they even intimated that we were interested in this outfit. We succeeded in convincing them, however, that we had nothing to do with it. I think the final result was, after some talk with Flournoy convincing him that ultimately some other mer-

8385 chant would put in a peddling outfit and they would have an oil fight there, that he agreed to sell us his outfit, and we discontinued it after we bought it. I think he had just one wagon. It didn't amount to very much. Very small. Of course the oil business at Macon is very small at best.

Q. After you purchased the Flournoy business, did you cause the price to be reduced 5 cents a gallon, or suggest that it be so reduced,

for the purpose of discouraging future competition?—A. We did not.

Q. Did anything like that happen at all?—A. No.

Q. Was any such suggestion made by you, or was that done?—A. It was not done.

Q. Was the suggestion made by you to Kercher or anybody else that it should be done?—A. No. The only object we had was to keep the merchants happy, keep them satisfied; that we didn't have anything to do with this peddling outfit and were not interested in trying to destroy their business.

Q. Do you remember a business conducted at Mobile, Alabama, by a woman by the name of Jones?—A. Yes, I recall that. A widow.

Q. Was that business purchased by the Standard?—A. I think it was, finally.

Q. Did you give Kercher any instructions with respect to his attempting to purchase that business?—A. My recollection is that shortly after Mrs. Jones' husband died (she had been running the business) she became dissatisfied and said she wanted to get rid of that business, she couldn't run an oil business and wanted to
8386 sell it. She wanted a fictitious price for it. My recollection is, she asked $5,000 for it.

Q. What was it worth?—A. It was worth probably, the storage tanks and her tank wagon and entire equipment (she didn't own any ground, hadn't any warehouses; it was on railroad property), $1,500. $1,200 to $1,500 would have been a good value for it.

Q. Was Kercher authorized to attempt to purchase it?—A. Yes. My recollection is that came about in this way. I have forgotten who it was that had negotiated directly for us with Mrs. Jones, or, rather, with her attorney. She had an attorney that advised her about these matters. He reported to us that there was no use of trying to do anything with them, that they had an idea that the Standard was very anxious to get that business and would pay a big price for it, and they held out because they no doubt thought we did, but we didn't care for it especially. In order to find out what price she would name to an outsider, to some one other than the Standard, it was suggested that Kercher go down and negotiate with her and see if he could get a price from her, a fair and reasonable price, and that was done. I don't remember just what price she asked him, but he reported that he could not do anything with the proposition at all, and came back home.

Q. This man Kercher finally left the company, did he not—discharged?—A. Yes, sir; we discharged him.

Q. Through his efforts you were in 1905 indicted at Pekin, Illinois, were you not, for an alleged subornation of perjury?—A. Yes, I was advised of that fact by my attorney.

8387 Q. You were advised of that fact by whom?—A. By Mr. Eddy, who was attorney for our company.

Q. Did you stand trial?—A. Did not.

Q. You were then living where?—A. Living in Cincinnati.

Q. And had been for how long?—A. Since 1898.

Q. And how long prior to 1905 had it been that you were in the State of Illinois at all?—A. I don't think I had been there for five years.

Q. The statute of limitations is three years?—A. Yes. I think it was probably later than that. I don't believe I was in Illinois—I can't recall.

Q. You hadn't been in the State of Illinois for at least five years prior to the return of that indictment, had you?—A. I wouldn't say absolutely five years; it was a long while. I was only there once or twice, according to my recollection.

Q. Did Governor Deneen issue a requisition against you for the purpose of bringing you back from Ohio to Illinois to stand trial on that indictment?—A. He did not.

Q. Did you ever suborn Kercher to commit perjury?—A. I did not, most emphatically.

Q. Or have anything to do with him in that regard?—A. I did not.

Q. What afterwards became of the indictment?—A. It was nolled.

Mr. ROSENTHAL. I offer in evidence certified copy of the order nolle prosseing the indictment, showing that it was nolle prossed on October 14, 1905—a certified copy of the order purporting to be

8388 signed by R. V. Howe, clerk of the circuit court, and is under the seal of the circuit court of Tazewell County, Illinois, of which Pekin, Illinois, is the county seat. It is not exemplified, and if there is any point made on its not being exemplified we will follow it up by having it properly exemplified.

Mr. KELLOGG. We waive the necessity of having it exemplified.

(The paper was marked Defendants' Exhibit 92.)

Q. Where are the principal offices of the Standard of Kentucky?—A. At present Covington, Kentucky.

Q. And how long have you been at Covington?—A. I think about the first of April, 1906, we moved over there.

Q. Where were they prior to that?—A. Cincinnati.

Q. And had been for how long?—A. I went up there in 1898. Prior to that. Oh, I think our company——

Q. A great many years?—A. Oh, yes, back in 1882 or 1883; I have seen old records there.

Q. Did the Standard of Kentucky ever refine any oil?—A. Never did.

Q. What is its business?—A. Merchandising in oil.

Q. Selling oils?—A. Selling oils; petroleum products and naphtha.

Q. And during the last five years, say, three or four or five years, it has sold, in a general way, through the central southern States, has it not?—A. Yes.

Q. What percentage of its business is done from tank wagons?—A. It varies in different years.

8389 Q. Say in 1906; have you had that investigated?—A. Yes, we have that every year. The total tank-wagon business figured, in round figures, 65 per cent of the total business.

Q. Have you got it exact?—A. 64.17 per cent.

Q. That was its total tank-wagon business?—A. Yes; deliveries by tank wagon of refined oil.

Q. What percentage of its business in 1906 was sold in milk cans?—A. .84 per cent; that is less than 1 per cent.

Q. What percentage of its total business of refined oil was done through wooden barrels?—A. 27.12 per cent.

Q. And in iron barrels?—A. .08 per cent.

Q. In bulk?—A. 6.30 per cent.

Q. And in cans to the consumer?—A. 1.49 per cent.

Q. Where does the Standard of Kentucky get its oil and gasoline from?—A. Well, it shifts about. In 1906 we were getting oil partly from Whiting and partly from the Gulf, Pt. Chalmette; getting some from over on the Atlantic seaboard. I might add also some from Lima and some from Parkersburg.

Q. How was that oil delivered?—A. To our stations?

Q. To the Standard of Kentucky?—A. Delivered in tank cars, as a rule.

Q. Where?—A. At their main stations, their stations where they had bulk storage.

Q. Take it through the States where the Standard of Kentucky did business, how many main stations did you have?—A. We had, in 1906, seven main stations.

Q. Were those located in different States?—A. They were.

Q. In seven different States?—A. I think so. I haven't
8390 figured that up, but I am pretty sure of it.

Q. Then, do I understand that the oil was delivered from the refineries to these seven different main stations, located in the seven different States, and there stored?—A. Yes.

Q. And in what quantities?—A. In quantities of from a thousand barrels to 20,000 barrels.

Q. Covering a consumption extending over what period of time ordinarily?—A. Ordinarily at our stations we would try to carry three months' supply.

Q. What became of the oil after it reached the main stations?—A. It was distributed, some of it to the substations, the bulk of it.

Q. In that State?—A. Yes; in that State.

Q. And how distributed to the substations in that State from this main station?—A. In some cases from tank cars, and in some cases in barrels.

Q. When distributed in barrels, by freight?—A. Yes; by rail.

Q. By rail I mean.—A. Yes.

Q. I wish you would explain a little more in detail just what your mode of doing business in that regard was.—A. You failed to mention or ask about substations. We have a number of substations where we have bulk storage, that receive their oil practically from the refinery just the same as the main station does.

Q. That is, in addition to these seven main stations, you have
8391 a great many bulk storage substations?—A. Yes; we call them substations.

Q. That receive the oil direct from the refinery?—A. Yes.

Q. In the States through which you operated, how many of that character of substations had you?—A. I haven't figured them up lately, but we have in the neighborhood of three hundred.

Q. And what became of the oil after it reached these substorage stations?—A. It is distributed mainly by tank wagon out to the trade in that State where the substation is located.

Q. In what quantity is oil stored in these substations?—A. In quantities of two to three months. We didn't aim to carry as large stocks——

Q. It was in stocks sufficient to run along for several months?—A. Yes; to guarantee or protect you in case of any accident to tank cars or delays in shipments, or such things as that which happen.

Q. Then the tank wagon comes to the substation?—A. Yes.

Q. And gets its oil?—A. Yes.

Q. And distributes it to its trade within that State?—A. It does.

Q. And the sale is made from where and for what?—A. It is made from the tank wagon, and the tank-wagon sale is cash.

Q. Made from the tank wagon to the dealer?—A. To the dealer.

Q. For cash?—A. For cash.

Q. Now, I observe that in a few cases these substations in your territory are located near the state line, so that tank wagons in
8392 those cases are in the habit of passing from one State to another in connection with their deliveries. What percentage of the total refined oil, tank-wagon business, did that constitute?—A. 58 per cent.

Q. 58 per cent represents that kind of business?—A. Yes.

Q. And even in that case of the 58 per cent, the oil is carted over in the tank wagon and the sale is made in the adjoining State for cash, is it not?—A. Yes.

Q. From that tank wagon?—A. Yes.

Q. Now, you spoke of a 84 per cent as being the total refined oil business done in milk cans. Will you explain that a little more in detail?—A. At certain seasons of the year the roads in certain sections become impassable and you can't haul a good-sized tank wagon there; that is, the wagon that we may happen to have at this substation is too heavy to pull it through the roads, and in order to keep our customers from running out of oil we send out a small wagon with 5 and 10 gallon cans in it, a light spring wagon; make deliveries that way at certain times to keep the trade supplied. That is a milk-can delivery.

Q. Of that 84 per cent milk-can delivery, what proportion of it passes from one State to another?—A. 9.74 per cent.

Q. That is, 9.74 per cent of the 84 per cent?—A. Yes.

Q. Are those milk cans so filled with oil sold from the delivery wagon to the dealer for cash?—A. Yes, sir; they are sold for cash.

Q. What percentage of the total refined-oil business is done in wooden barrels?—A. 27.12 per cent; I stated that previously.

8393 Q. And under what circumstances are wooden-barrel shipments made ordinarily?—A. They are made ordinarily to points that can't be reached by a tank wagon.

Q. Where the delivery by tank wagon is impossible?—A. Yes, sir; the distance is too great.

Q. Give me an illustration of that, please.—A. Well, we will say a tank wagon will operate out from a substation 15 miles, but to go 25 miles it would take him two days to make the trip. 25 miles a day and return with a wagon is too great a distance, and we ship to those points in wooden barrels.

Q. And when those wooden barrels so filled in that way are sold, do you receive cash therefor?—A. No, as a rule they are sold at 30 days' time, wooden-barrel deliveries.

Q. They are in large quantities as a rule?—A. Yes, 5 and 10 barrels; sometimes sell a carload.

Q. Are those barrels filled from the storage tanks that you spoke of?—A. Yes, they are filled at the substation from which they are shipped.

Q. At the substation?—A. At the substation from which the shipment is made.

Q. Have you made up any figures showing what percentage of that barrel business which is so made up passes from one State to another in its delivery?—A. Yes, I have the figures.

Q. Let me have them, please.—A. 5.62 per cent.

Q. That is, 5.62 of the 27.12?—A. Yes.

Q. As I understand you, that proportion of the total busi-

8394 ness is done in wooden barrels?—A. Yes.

Q. And it consists of shipments to points outside of the State in which the storage tanks are located?—A. Correct.

Q. Where the barrels are filled?—A. Yes.

Q. What percentage of the total refined oil business have you stated as being done in iron barrels?—A. .08 per cent.

Q. And where are those iron barrels filled?—A. They are filled at these substations where the wooden barrels are filled.

Q. And under the same circumstances as the wooden barrels?—A. Under identically the same conditions.

Q. Why are the iron barrels used instead of the wooden barrels?—A. They are sometimes used as a substitute for milk-can delivery or tank-wagon delivery, and sometimes they are used in place of wooden barrels. Some customers require iron barrels and won't take a wooden barrel.

Q. They are also shipped by rail, are they not?—A. Yes. Sometimes it happens that you can't even get a tank wagon or milk-can wagon to go to a point that is ordinarily visited by a tank wagon, and you are compelled to ship to that point in wooden or iron barrels.

Q. What percentage of the .08 in iron barrels, so filled at these substations, passes into States other than the State where the substations are and where the barrels are filled?—A. 8.15.

Q. That is, 8.15 of the .08 per cent?—A. Yes.

Q. Passes from one State to the other?—A. Yes.

Q. What percentage of the total refined-oil business done by
8395 the Standard of Kentucky represents bulk sales?—A. 6.30.

Q. What do you mean by bulk sales?—A. Sales to peddlers, people that come to the plant and get the oil right from the storage.

Q. Peddlers come there and load their peddling wagons at the storage tanks?—A. Yes.

Q. And how is that oil sold to peddlers—for cash?—A. Yes.

Q. What portion of the 6.30 per cent is sold directly from storage tanks?—A. I should have added in addition to that peddlers' business, bulk sales.

Q. To others than peddlers?—A. Yes.

Q. That is, tank-car deliveries?—A. We might sell a customer a tank car of oil from a main station and ship it into another State.

Q. What percentage, then, of the 6.30 per cent is sold to peddlers directly at the storage tanks?—A. 2.62.

Q. Isn't it to all but 2.62?—A. Yes. 2.62 is the business that goes out of the State; the remainder is business that is sold right at the tank.

Q. And what percentage of the total refined oil is sold in cans?—A. 1.49.

Q. And does any part of that pass from one State to another?—A. Does not.

Q. It is all intrastate?—A. It is all intrastate.

Q. These figures that you have given me are all figures of the 1906 business, are they not?—A. Yes; 1906, and all on refined
8396 oil.

Q. Now, with those figures as your basis, how much of the total business done in refined oil of the Standard Oil Company was entire intrastate?—A. 97.85.

Q. The other 2.15 was interstate?—A. Yes; those are the figures I have. I have not taken the difference. 2.15 is the total interstate business on refined oil for 1906.

Q. And what was it for the year 1907?—A. 1.83 per cent.

Q. Have you also made up the same figures covering naphtha and gasoline?—A. Yes.

Q. And what was the percentage of interstate business in naphtha and gasoline for the year 1906?—A. The total intra or inter state?

Q. Interstate.—A. The total interstate business on naphtha and gasoline for 1906 was 2.79 per cent.

Q. And leaving 97.21 per cent intrastate business in naphtha and gasoline?—A. That is correct.

Q. What were the figures for 1907?—A. 1907 the gasoline business, interstate, was 2.28 per cent.

Q. These two years that have been selected, 1906 and 1907, was there any particular purpose in selecting those two years in making up these figures?—A. There was not, excepting that we didn't have the records back of that. That was one of the reasons.

Q. That is, the records for 1906 and 1907 are accessible?—A. Very handy—that is to say, they could be obtained.

Q. Is it or is it not true that the figures for the years preceding 1906, during the time that you have been vice-president
8397 of the Standard Oil Company of Kentucky, were substantially the same?—A. They were.

Q. As the figures that have been shown covering these two years?—A. Yes; there has been no change in the situation. While the total volume of business might change the percentage would remain just about the same.

(A recess was here taken until 2 o'clock p. m., at which time the direct examination was resumed by Mr. Rosenthal.)

Q. One Boardman testified that when he began selling oil at Augusta in 1904 the Standard's price was 11 cents, and that this price was gradually reduced to 9 cents. What kind of oil was Boardman selling and what kinds of oil was the Standard Oil Company selling?—A. My recollection is that we demonstrated several times that the oil Mr. Boardman was selling was prime white oil, what we call the common oil, in contradistinction to water white or fancy oil.

Q. What two kinds of oil was the Standard selling?—A. We were selling a water white oil under our regular brand, Fireproof, and a common oil under the name of Diamond Headlight.

Q. The Fireproof oil was the water white?—A. That was the best grade of oil.

Q. And the Diamond Headlight was the prime white?—A. Yes.

Q. Did the water white, or Fireproof, ever go to 9 cents?—A. It did not.

Q. Did the Diamond Headlight?—A. It did, yes; that price went down to 9 cents. It was generally carried, as a rule, a cent below the fancy oil.

8398 Q. That is, the prime white oil sells as a rule for a cent less than the water white?—A. Yes.

Cross-examination by Mr. KELLOGG:

Q. You say, Mr. Collings, that in the year 1906 97.85 per cent of the business of the Standard Oil of Kentucky was intrastate?—A. That record I was reading from was made up by the treasurer of our company, at my request.

Q. What do you understand by that?—A. Those are the figures as I read them; I don't recall them.

Q. What do you understand by "intrastate" business?

Mr. ROSENTHAL. Mr. Kellogg isn't questioning your figures.—A. Intrastate business we regard as the business that is done from the station where the plant is located, all distributions being made from there to towns where the plant is located.

Q. After the oil has been shipped into the State?—A. Yes.

Q. Now take it prior to 1906. Where did you ship most of your oil from into that territory?—A. That is pretty hard to say offhand.

Q. Most of it came from Whiting, didn't it?—A. Quite a good deal of it came from Whiting. The only point I want to make there is a question about the exact dates. It is very difficult to remember. The matter of the point of supply as to 1906 or 1905 I wouldn't keep in my mind, I can't do it.

Q. No, but about that time (I am not particular as to the exact date) you commenced to get some oil from Texas, didn't you?—A. It is true that most of our oil came from Whiting up to a

8399 certain time when we began to get oil from the southern fields.

Q. That time was along about 1905 or 1906, wasn't it?—A. Yes.

Q. Up to that time, during your vice-presidency or management of the Standard Oil of Kentucky, nearly all of your oil came from Whiting, didn't it?—A. That is substantially correct.

Q. Some little from the seaboard, did you say?—A. Yes; some of our southern points were supplied from the Atlantic seaboard.

Q. That is, the oil would be shipped down the coast to Savannah or Charleston, and from there inland to points not a great way distant from the seacoast?—A. Yes.

Q. That is correct?—A. That is correct.

Q. But with that exception all of your oil came from Whiting, didn't it?—A. I won't say that with that exception all of it did, because we had Lima and Parkersburg as points of supply.

Q. You didn't get much from there?—A. Yes, we got some.

Q. A small percentage?—A. The percentage of the Whiting oil was greater than any other.

Q. Very much greater, wasn't it?—A. Yes, at that time, prior to 1905.

Q. Now, every gallon of oil sold in your territory was shipped in by your company from outside of your territory, wasn't it?—A. It was; we didn't make any.

Q. And from outside of the States in your territory?—A. Yes.

Q. The Standard Oil Company of Kentucky is purely a selling company, isn't it?—A. That is correct.

Q. Owned by the Standard Oil Company of New Jersey?—

8400 A. Well, that is a question of the stockholders. I have not recently examined the stock ledger; it is not in my possession.

Q. Well, you believe the stock of your company to be controlled by the Standard Oil Company of New Jersey, don't you?—A. Yes.

Mr. ROSENTHAL. There is no question about that in this record.

Q. The Standard Oil Company of Indiana is also owned and controlled by the Standard Oil Company of New Jersey, isn't it?—A. I couldn't testify under that head; I don't know.

Q. What is your understanding?—A. I have seen it in the newspapers; that is as much as I know of it. I suppose every one has as much information on that subject as I have.

Q. Personally you know nothing about it?—A. Personally I do not.

Q. The Standard Oil Company of Indiana, then, is the company that you bought most of your oil from?—A. At the time you are speaking of, 1905, that is correct.

Q. Since that time the majority of your oil has come from the Standard Oil of Indiana, hasn't it?—A. No, I think not; not the majority now; we are pretty well split up.

Q. You are buying considerable from Texas now?—A. Yes. We are receiving oil by bulk boat now at a number of points.

Q. The oil that you buy from the Standard of Indiana you buy at Whiting, don't you?—A. Yes.

Q. It becomes your property when it is loaded onto the cars
8401 at Whiting?—A. I haven't looked into that now. I don't know whether the oil is sold to us delivered or sold f. o. b. Whiting.

Q. You pay the freight on it from Whiting station, don't you?—A. I think we do.

Q. You accept the oil f. o. b. Whiting, don't you?—A. Yes, I suppose that is correct.

Q. And all that oil is shipped into the States by the Standard Oil of Kentucky?—A. Yes.

Q. In all of your orders, directions are given by the Standard Oil Company of Kentucky?—A. Yes, that is correct.

Q. The Standard Oil of Indiana has nothing to do with the routing of that freight whatever, has it?—A. I am not sure about that, but I am rather inclined to think we give the shipping directions when we order the oil. It is not shipped in my department.

Q. Now, that oil is taken to seven main stations and several hundred substations, isn't it?—A. Yes.

Q. How many hundred substations?—A. I think there are about three hundred; I won't say offhand, but that is about the number.

Q. Your territory is all of the territory south of the Ohio River, east of the Mississippi River, and west of the Atlantic Coast States, isn't it?—A. Yes, practically that. Georgia and Tennessee are the border line.

Q. And Florida?—A. Yes, we have Florida and Georgia.

Q. You have Georgia and Florida?—A. Yes; that is south.

Q. You have seven main stations. Can you tell where those are?—A. Yes. There is Covington, Kentucky; Memphis, Tennessee; Louisville, Kentucky; Birmingham, Alabama; Atlanta, Georgia;
8402 Jacksonville, Florida, and New Orleans, I think. Is that seven?

Q. Yes. You also have something like 300 substations?—A. Yes.

Q. You ship the oil direct in tank cars from Whiting to these substations, don't you?—A. To the majority of them. I don't say always from Whiting, now.

Q. Either from Whiting or Texas?—A. Yes. We may ship it also from Pt. Chalmette.

Q. I am coming to that in a moment. The oil that is shipped from Whiting goes into either the main or substation?—A. Yes; in case it is a shipment from Whiting that is the way it would be handled.

Q. Then, you ship some oil to consumers direct, by carloads, don't you?—A. Yes.

Q. That the bulk isn't broken at all?—A. No, it goes right direct from the refinery.

Q. That oil that goes into these main and substations you take and ship out by tank wagons and by barrels in the way that you have described?—A. That is correct.

Q. So that all the oil your company sells is interstate commerce, isn't it?—A. The distribution takes place within these States. Now I am not going to interpret that for you. I am not good enough a lawyer for that.

Q. You interpreted the amount of oil that was interstate commerce.—A. I simply took the figures to show that we distribute from these stations; that these stations within each State distribute the oil practically within the States in which they operated, and it didn't go outside.

Q. But when you ship it into the State?——A. Follow that again back a little farther and go to the source of supply. I didn't go into that, and I don't think I am quite good enough of a judge to
8403 say whether that would be construed as interstate or intrastate.

Q. I am not going to ask you. Now, the oil that comes from Texas is shipped in the same way to these stations and substations, isn't it?—A. No; we don't get any oil from Texas that way.

Q. You don't get it by rail?—A. No; it comes by bulk boat.

Q. To what places?—A. Port Chalmette.

Q. Port Chalmette is where—in Louisiana?—A. It is a point in Louisiana, on the Mississippi River, about 15 or 20 miles below New Orleans.

Q. It is shipped to that point by bulk steamers?—A. Yes.

Q. And then unloaded and shipped by rail?—A. Yes; from Port Chalmette to points within the field we operate in.

Q. To the main stations and the substations?—A. Both.

Q. The same way from the north; oil that comes down the Atlantic seaboard to what places?—A. Unloaded at Savannah and Jacksonville and distributed there. It comes down in bulk boats from Savannah and Jackson.

Q. Now, the oil that you shipped from Whiting during these years up to 1906, or about 1906, was shipped very largely through Grand Junction, wasn't it?—A. I couldn't tell you about those routings. The freight department handles that. I never looked into it.

Q. Don't you know, from your knowledge of the business, that a very large amount of it was shipped by Grand Junction?—A. That would be the natural channel going south.

8404 Q. Let us see whether it is or not. Grand Junction is situated away down in the southern corner of Tennessee, isn't it?—A. I think it is. It is called Grand Junction from the fact that it is the intersection of three or four roads running through there.

Q. It is the intersection of two roads, isn't it—the Southern Railway and the Illinois Central?—A. I rather think there is another road down there.

Q. What is it?—A. I couldn't tell you. I haven't really looked into this matter at all.

Q. I don't believe you can tell us.—A. Probably not. I haven't looked into it.

Q. It is a place of about four or five hundred people, isn't it?—A. It is a small town. I noticed it as I went through there on the Illinois Central road.

Q. Isn't it a fact that over 1,500 cars a year for your territory went by the way of Grand Junction, went down into southeastern Tennessee?—A. I couldn't testify as to that.

Q. You don't know?—A. No.

Q. You know a large amount did?—A. I know we got a great deal of oil from Whiting, but I had nothing to do with the routing of it and never looked it up, never investigated it.

Q. Now as to the northern part of your territory, Kentucky, a part of Tennessee, all of the northeastern part of your territory, that was the long route, wasn't it?—A. As I say, I never looked this up. I have never had a thing to do with this question of the routing of the goods at all. The only thing I am interested in is, when they
8405 get the goods down to these stations, to market them.

Q. Who does have to do with the routing of them?—A. I think Mr. Van Overbake, our routing agent.

Q. Where is his office?—A. In Covington.

Q. He has the routing of it?—A. He looks after all that part of the business.

Q. You know, don't you, as a matter of fact, that to go from Whiting, Indiana, to Grand Junction, Tennessee, then away back up into Kentucky, is a long route?—A. It doesn't seem possible that they would make a shipment that way.

Q. Well, they do do it?—A. Well, I say I don't know. It doesn't look conceivable. I don't know it.

Q. Well, Chattanooga, then. You know they ship oil that way to Chattanooga, don't you?—A. I do not.

Q. It appears in evidence that they do.—A. Well, I don't know it, I can tell you that. As I say, that is a detail of the business I never bother with. The main thing with me is to get the goods and sell them after I get them into my storage tanks.

Q. You stated in answer to Mr. Rosenthal's question that you were indicted in Illinois for subornation of perjury. Is that correct?—A. I was so advised by my attorneys.

Q. Who were your attorneys?—A. Mr. Eddy, of Chicago.

Q. Mr. Eddy, the attorney of the Standard Oil Company?—A. I think he is attorney for the Indiana Company. I know when we used to operate in Illinois and had any business for an attorney he looked after it.

Q. Judge Pinckney, of Peoria, Illinois, also represents
8406 you?—A. Yes, he was the attorney at Peoria that looked after our Peoria business.

Q. That indictment was found against you and Mr. Guy B. Taylor, wasn't it?—A. I so heard.

Q. Who is Mr. Guy B. Taylor?—A. He was at that time a clerk in Mr. Holmes' office, the treasurer's office.

Q. Mr. Holmes was the treasurer of the Standard Oil of Kentucky?—A. Yes.

Q. And Guy B. Taylor was his assistant, was he?—A. At that time.

Q. Before that what was he?—A. He has always filled some position in Mr. Holmes' office; I don't recall it.

Q. Has he been under you?—A. Oh, no; I had nothing to do with him. That branch of the business is purely the accounting feature of the business.

Q. That indictment was found at the May term of the circuit court in 1905, wasn't it?—A. I don't remember the period.

Q. Did you surrender yourself for trial?—A. I did not.

Q. Did you refuse to surrender yourself for trial?—A. I did not.

Q. Why didn't you go over there and stand trial and get clear?—A. I really didn't pay a great deal of attention to it for the reason that I knew I was absolutely guiltless of any such charges; and very shortly after the matter came to my attention our attorneys advised me that Governor Deneen had refused to honor any requisition; to pay no attention to it.

Q. The requisition was simply for the sake of getting you
8407 into the State so as to try you, wasn't it?—A. They told me to pay no attention to the matter.

Q. And you refused to go into the State for trial, did you?—A. I never refused.

Q. Well, you didn't go over there and surrender yourself for trial, did you?—A. No, sir, I didn't.

Q. Didn't you instruct your attorneys to oppose such requisition?—A. No, sir, I never instructed them.

Q. Didn't they go to Springfield?—A. I did not instruct them to.

Q. Did they go to Springfield and oppose the requisition?—A. I suppose they did. I never went into that.

Q. And the ground they took was, that you couldn't be guilty of subornation because you were not in Illinois at the time the man committed perjury; isn't that true?—A. I don't know, sir. I never investigated that feature of the matter. When they told me to pay no attention to it, that it amounted to nothing, I never thought about the thing afterward.

Q. You haven't been in Illinois since, have you?—A. No; I have had no occasion to go there.

Q. Well, you haven't been there?—A. No. And there are lots of other places I haven't been to.

Q. Where did you have a conference with them when they told you you needn't pay any attention to it?—A. Over the telephone.

Q. Where from?—A. Chicago. Mr. Eddy telephoned me from Chicago.

Q. To Covington?—A. To Cincinnati.

8408 Q. They didn't come down to Cincinnati?—A. They did not.

Q. Did you direct them in that conversation to oppose the requisition?—A. I did not. I left the matter entirely in their hands.

Q. Well, you were not sure enough of your innocence to go and be tried and be acquitted, were you?—A. I certainly was, but I didn't see why, when they rigged up a little game of that sort, I should go trotting around the country at the demand of this man or that man. To begin with, I knew that it started out as a blackmailing scheme.

Q. Now let us see about that. Who was Mr. Kercher?—A. Mr. Kercher was a little cheap employee. He was a tank-wagon driver originally. He looked after the peddling business.

Q. He worked for your company?—A. He did.

Q. For how long?—A. I don't remember.

Q. Two or three years?—A. Yes.

Q. Four or five years?—A. No, I don't think that long.

Q. Three or four years?—A. I couldn't fix the date.

Q. During a period of three or four years he was looking after your secret companies, wasn't he?—A. Well, I don't know about their being secret so much.

Q. Let us see about that?—A. All right.

Q. What companies was he looking after?—A. I think I mentioned some this morning; all, in fact, that I could recall. The Hamilton——

Q. The Hamilton Oil Company?—A. Yes.

Q. The Paragon Oil Company?—A. Yes.

Q. And the Banner Oil Company?—A. That is right.

8409 Q. Did you know a man by the name of Thomas that was a peddler for your company?—A. I did not.

Q. Never heard of him?—A. Where was he located? I never heard of him.

Q. Pekin, Ill.—A. No, sir; I don't recall any such person.

Q. Did Mr. Kercher have a lawsuit about a wagon that Mr. Thomas sold in Pekin, Ill.?—A. I heard that, after the transaction was all over.

Q. You wrote him a letter congratulating him on winning the suit, didn't you?—A. I don't think I did, sir.

Q. You don't think you did? I show you a letter signed "C. T. Collings, B." Who was "B?"—A. "B?" Let me see the handwriting; maybe I can tell you. Several men of that initial. [After look-

ing at letter handed to witness by Mr. Kellogg.] That looks like Barline.

Q. Who was Barline?—A. Barline was one of my stenographers.

Q. To whom you dictated letters?—A. I did, but many others did also. I have three, and they are used by others in the office besides me.

Q. Did you write that letter?—A. I don't think I did, sir.

Q. You don't think you did?—A. No, sir.

Q. Do you know you didn't?—A. I can't recall any such letter or any such incident as that.

Q. You remember the incident about the wagon, don't you?—A. I said I had heard of it after the transaction was over.

Q. How long after it did you hear of it?—A. Probably two weeks.

8410 Q. What were the circumstances you heard about this wagon?—A. I heard that somebody stole one of Kercher's wagons while he was away somewhere, and when he came back he had to go before a justice of the peace and swear out a warrant to get the wagon—a requisition of some kind.

Q. He got it on replevin, didn't he?—A. A replevin, or something of the kind.

Q. He won the suit, didn't he?—A. I don't know. All I heard was he had lost his wagon and got it back again.

Q. Is that the handwriting of Mr. Barline?—A. That is his handwriting.

The letter was marked Petitioner's Exhibit 855.

Mr. KELLOGG. I offer this letter in evidence and would like to have it read into the record instead of attached.

Mr. ROSENTHAL. I object to it upon the ground that it is immaterial.

Mr. KELLOGG (reading):

"CINCINNATI, OHIO, *May 20, 1902.*

"Mr. CHAS. KERCHER,
"*Box 144, Terre Haute, Ind.*

"DEAR SIR: I am in receipt of yours of the 15th inst. Note you won the case at Pekin and secured the old wagon and sold it for $85 to Mr. Leischeidt. I have written Mr. Lashley to allow this party a rebate of 1 c. in order to encourage him to go after the business.

"In regard to the other wagon and horse: In view of what you say about the requirements at Terre Haute, it would look as
8411 if the proper thing to do would be to send this wagon to Terre Haute, and you can do so if you think it advisable.

"Yours, truly,

"C. T. COLLINGS.
"B."

Q. Now, you don't think you wrote that?—A. No, sir; I say I didn't write that.

Q. Who did write that?—A. There were three men in my office.

Q. Who were they?—A. One was Mr. Stanley, who was general manager.

Q. His full name?—A. E. B. Stanley. The other was Mr. Sanford.

Q. What was his name?—A. I can't recall.

Q. D. P. Sanford?—A. I can't recall his initials.

Q. Mr. Sanford?—A. Yes.

Q. What was his position?—A. He had charge of a certain portion of the handling of the peddler's business.

Q. How did you hear about this wagon being replevined?—A. My recollection is I had been away on a trip, and when I came back among other things Mr. Stanley mentioned something about a case of somebody stealing one of our wagons, and got it back again. That is all I know about it.

Q. The peddler sold it, didn't he?—A. I don't remember the circumstances more than that.

Q. And Mr. Kercher replevined it?—A. I heard that.

Q. It belonged to your company, didn't it?—A. It did.

Q. That is to say, if it was Kercher's wagon—that is, if it was a wagon that Mr. Kercher was using at Pekin——A. I don't know whether it was one of those wagons or not.

8412 Q. It belonged to your company if he was using it?—A. Those wagons in Pekin, used in the peddling business at Pekin, handled by Kercher, belonged to the Standard Oil Company.

Q. And the wagon you heard about belonged to the Standard Oil Company?—A. It probably did.

Q. And Mr. Kercher replevined it?—A. That is what I heard.

Q. And you understood he won his case about that, didn't you?—A. That is what I was told.

Q. You were told that by Mr. Stanley?—A. By some one in the office; I couldn't say who told me.

Q. Now, this letter says, "Note you won your case at Pekin and secured the old wagon."—A. I say the person that wrote that letter was very likely the one that told me.

Q. You swear you didn't write that letter?—A. Yes, sir.

Q. Where is Mr. Berline?—A. He is dead.

Q. So he can't contradict you?—A. No; poor fellow.

Mr. ROSENTHAL. Well, you have got a lot of witnesses. Probably you can get him.

Q. Now, Mr. Kercher replevined that wagon in his own name, didn't he?—A. That is what I was told. I don't know a thing about it.

Q. And swore that it belonged to him, didn't he?—A. That is what I heard at the time it was stolen.

Q. And you and Taylor were indicted for procuring him to swear to that, weren't you?—A. I think that is what was in the indictment, but——

8413 Q. Isn't it a fact that you sent him a bill of sale, or had Mr. Taylor do it, dated back so that he could swear that he owned it?—A. I don't know a thing about that, Mr. Kellogg.

Q. You don't know anything about it?—A. No, sir. I had nothing to do with that.

Q. Well, we will see about that.—A. I never heard of that.

Q. You never heard of it?—A. No.

Q. Do you know Mr. Taylor's handwriting?—A. I might; I haven't seen it in a long while.

Q. Who was Mr. C. M. Stout?—A. I don't know that.

Q. You never heard of Mr. Stout?—A. No; I can't——

Q. Did you ever hear of the name?—A. I have heard of "Stout" a great many times, but I can't recall an employee of that name. I don't think we had an employee by that name.

Q. Do you ever remember of using that name in your business?—A. No, sir.

Q. You don't remember a man by the name of Stout in Illinois?—A. I can't recall such a man.

(Papers marked Petitioner's Exhibit 856 A and 856 B.)

Q. I show you Petitioner's Exhibit 856 A. Whose handwriting is that?—A. I have not an idea, sir.

Q. You have no idea?—A. No.

Q. You know Mr. Taylor, don't you?—A. Yes; I do.

Q. You have seen his handwriting many times, haven't you?—A. No; I never have. Oh, I have seen his handwriting, but I haven't seen it many times.

Q. How long has he been in the employ of the Standard Oil Company?—A. Why, it has been—let me see—four or five years.

8414 Q. Four or five years?—A. Since he was in the employ.

Q. Oh, since he was?—A. He isn't in the employ of the company and hasn't been for quite a while, and if I ever saw his signature I have forgotten it; I couldn't identify it.

Q. What office was he in?—A. He was on the fourth floor and I was on the second.

Q. What was his business?—A. He was in the accounting department.

Q. But you don't know his handwriting?—A. I do not, because there was no occasion for me to see his handwriting. He didn't write anything for me or sign any letters and I didn't see any of his correspondence.

Q. Where is he now?—A. I think he is living in Cincinnati.

Q. Is he in the employ of the Standard Oil Company?—A. He is not, sir.

Q. Now, this replevin took place in May, 1902, didn't it?—A. I don't recall the period.

Q. It was about the time that letter was written, wasn't it?—A. Well, if the letter says that time.

Q. Yes; the letter I showed you. That is dated May, 1902.

Q. Whoever wrote that was probably the person that informed me, and I infer from that that that is about the date it occurred. That is all I know about it. I know about it just as you know about it, by looking at that letter.

Mr. KELLOGG. I offer in evidence Petitioner's Exhibit 856 A and the bill of sale with it, 856 B.

Mr. ROSENTHAL. I object to it upon the ground that neither
8415 the letter nor the bill of sale has been properly proved as emanating from the Standard Oil Company or any of the defendants in this case or any of the agents or representatives of the defendants; also as immaterial.

Mr. KELLOGG (reading):

"CINCINNATI, O., *May 2, 1902.*

"Mr. CHAS. KERCHER,

"*P. O. box 144, Terre Haute, Ind.* ~~Pekin, Ills.~~

DEAR SIR: I have yours of April 30th, in reference to action of your agent at that point. I enclose you herewith check for $100.00 requested. I also enclose original and duplicate bill of sale to cover transfer of the Pekin business at the time you took hold of it. You can fill in on this your name and necessary description of the items that were turned over to you, also the date on which you took charge of the business. This bill of sale is sent you to hold in reserve. If in the replevin proceedings you will bring you establish ownership satisfactorily it is suggested that you do not produce this bill of sale. It is sent you, however, so that in case you have to produce further evidence than you have in the shape of vouchers, and Thomas' receipts to you for salary, you will have them.

"Kindly keep me advised just how matters progress in this Pekin case, and send me as soon as possible a statement of the shortage.

"Yours truly,

"G. B. TAYLOR."

Q. You never heard of that?—A. I never did.

Q. In your life?—A. No, sir; Absolutely never heard of
8416 any such statement as contained in that letter.

Q. And you never heard of your company, through Mr. Taylor, sending Kercher a bill of sale, telling him to keep it in reserve and not to use it unless necessary?—A. I positively did not.

Q. And you never heard that Kercher went on and swore that the property was his?—A. I heard that, as I tell you, through the person who informed me that Kercher had gotten his wagon back. The details I didn't hear.

Q. Now, when you heard that Mr. Kercher had sworn in this replevin suit that he owned this property, did you reprimand him?—A. No; I did not, because——

Q. Did you write him?—A. I did not.

Q. Did you say anything to him about it, that that wasn't true?—A. No; because I had very little to do with Mr. Kercher.

Q. You had very little to do with him?—A. Very little to do with Mr. Kercher.

Q. He was in your territory?—A. Yes; but he was not under my direct supervision.

Mr. ROSENTHAL. But it was true that he got legal title.

Q. You just swore you owned the property, didn't you—the Standard Oil?—A. I said that the wagon belonged to us, yes.

Q. It belonged to the Standard Oil Company?—A. Yes.

Q. And you understood at that time that Mr. Kercher had sworn it belonged to him?—A. No; I didn't know any of the details about how he got his wagon. I say he got it back.

Q. Didn't you just swear that he swore it belonged to him?—
8417 A. No, sir; I didn't say that. Read the testimony and see if I said that. I said that I knew he got the wagon back, and that is all I know.

Mr. ROSENTHAL. Do you know in whom the legal title was?—A. All I know is we had some wagons that we turned over to Kercher.

Mr. ROSENTHAL. Do you know whether Kercher had legal title or the Standard Oil Company had legal title?

WITNESS. I don't know exactly what you mean by legal title.

Q. You don't know what legal title is?—A. We may have transferred it to him.

Q. Doesn't the Standard Oil Company distinguish between the legal title of one man and another?—A. I suppose it does, but I don't know what kind of a fine point you are trying to make on that.

Q. Who owned that wagon—Kercher or the Standard Oil?—A. That depends upon whether Kercher had ever paid for it in any way.

Q. Did he owe you anything for it?—A. I don't know that he ever did.

Q. If he didn't owe you anything for it, it belonged to you.—A. That is a detail of that business I had nothing to do with.

8418 Q. What about these wagons that were in Kercher's name? You said a little while ago that the Standard Oil owned them all.—A. I said as a rule these wagons that we turned over to Kercher, the Hamilton Oil Company, for instance, I think those wagons stood in the name of the Standard Oil Company.

Q. Yes; they didn't stand in their name at all. They stood in the name of the Hamilton Oil Company and the Banner Oil Company, probably?—A. That was probably the way of it, I don't know.

Q. And you owned the companies?—A. Yes; as I told you, those are details that I can't—it is so long ago, and these are details that I had nothing to do with—I couldn't say positively one way or the other, because I wasn't in a position to have the details and the facts necessary to form an opinion even at that time.

8419 (Paper marked Petitioner's Exhibit 857.)

Q. The bill of sale which I offered in evidence, Exhibit 856 B, is dated December 11, 1901, and is from C. M. Stout to Charles Kercher, of a one-horse oil tank wagon and all harness, cans and receivers, etc. Is that the property you referred to? [Handing witness paper.]—A. Now, as I said before, I do not know a thing about this transaction. I never saw that document in my life before.

Q. You never heard of that man, C. M. Stout?—A. No; I can not recall him. If that man was in our employ I do not recall him.

Q. You do not know any reason why Mr. Taylor should have signed a bill of sale dated back to 1901?—A. I don't know a thing about it.

Q. To Mr. Kercher. Did you ever hear that he had signed such a bill of sale?—A. No, sir.

Q. You never did. No man by the name of Stout ever worked for you?—A. I would not say positively about that. We had thousands of men, you know, and it is impossible to keep the names in my head. I can not say about that.

Q. I show you Exhibit 857. Whose signature is attached to that?—A. That is my name, signed by—I have a sort of recollection that that is a stenographer by the name of Hobbs.

Q. Hobbs? Was he in the habit of signing your name, too?—A. Yes.

Q. Now, isn't it a fact that the letters that Mr. Sanford signed and that Mr. Stanley signed—or dictated rather—had their initials,
8420 too, when they signed your name?—A. Well, that might happen, yes; but then it just as often happened probably that they would dictate to one of my stenographers.

Q. Did you dictate that letter, or didn't you? [Handing witness letter.]—A. No, sir.

Q. You did not dictate that letter?—A. No, sir.

Q. Who did?—A. Some one probably in my office.

Q. In your office? This is dated May 6 and the other letter is May 20. This says "Charles Kercher, Box 144, Terre Haute, Indiana."

Mr. ROSENTHAL. Wait a minute. Is not that one of the Kercher letters that is already in the record?

Mr. KELLOGG. No.

Mr. ROSENTHAL. What? No?

Mr. KELLOGG. No.

Mr. ROSENTHAL. Well, I object to it, upon the ground that there is no proof of its authenticity, and upon the ground that it is otherwise immaterial.

Q. "I regret to note the trouble you are in at Pekin." What trouble did you refer to?—A. I don't know. I never wrote the letter.

Q. Where is Mr. Hobbs?—A. I think he is somewhere down in Kentucky.

Q. Working for your company?—A. Yes.

Q. He is still working for your company?—A. I think he is.

Q. At this time he was a stenographer in your office, was he?—A. He was a stenographer at one time, yes.

Q. But you did not dictate that letter?—A. I am pretty—I am quite sure I did not.

8421 Q. Do you swear positively you did not?—A. Yes; I do. It does not sound like me at all.

Q. It does not sound like you?—A. I did not go into those kind of details.

Q. You did not?—A. No; I didn't go into details of that kind. Mr. Kercher was not under my supervision, and it is not natural that I would be writing letters to him.

Q. Now, wasn't it that transaction, covered by that bill of sale?—A. I don't know, sir.

Q. That you were indicted for?—A. I just told you that I didn't write that letter, and I don't know what it applies to.

Q. When did Mr. Kercher quit your employ?—A. I don't recall, sir.

Q. Well, about when?—A. That would be pretty hard to say. I can't keep those kind of things in my head.

Q. Shortly after this indictment, wasn't it, or about the time?—A. Oh, I imagine before that.

Q. What is that?—A. I say it must have been some time before that, because he wrote some letters, making certain demands on us.

Q. Isn't it a fact that he was in your employ—I don't mean about the time of this indictment; I mean about 1902, about the time of this replevin suit?—A. Oh, yes; I guess he was.

Q. Shortly after that?—A. I think he was.

Q. Who is Mr. Holt?—A. Who?

Q. Mr. Holt.—A. Yes; I recall Mr. Holt.

Q. You do recall him? Who is he?—A. He is a salesman
8422 that got us into a lot of trouble in Tennessee.

Q. He got the Standard Oil Company into trouble in Tennessee, you say?—A. Yes; he did.

Q. Well, who is he?—A. He was a man, a young fellow of about 21 or 22 years old, that traveled around in Tennessee, that certain part of Tennessee, and sold oil for us.

Q. What?—A. He was a young man about—at that time—he has not been with the company for, oh, I don't know, four or five—three or four years; but, I say, at the time he was in our employ, my recollection is (I remember him) he was a young fellow about 22 or 23 years old, and was a salesman, sold oil.

Q. He was what you call your traveling salesman, was he?—A. Yes; he was a traveling salesman.

Q. He had charge of the local sealesmen?—A. No; he had not.

Q. What territory did he have?—A. He traveled around Gallatin; that is all I know about it.

Q. How much territory did he cover as a traveling salseman?—A. Oh, I don't know.

Q. Where was his headquarters?—A. Nashville.

Q. Nashville, Tennessee?—A. Yes.

Q. Did he have all of Tennessee?—A. No, no.

Q. How much of it?—A. Well, I was just going to say, as a general rule he would have about fifteen substations to look after.

Q. Fifteen substations—well, did he have fifteen substations to look after?—A. Somewhere around that number would be the rule. That
is such a detail as I do know about, but I am just giving you
8423 what is our rule generally on a question of that sort.

Q. I understand. All over your territory they will have traveling salesmen who have fifteen or twenty substations to look after?—A. Yes; some of them have more.

Q. Some of them have more?—A. According to the lay of the land. If it is very sparsely settled, why, they can not handle as many as they can where it is closely settled.

Q. What was his full name?—A. I can't recall.

Q. His name was Holt?—A. Yes; I know that.

Q. Did you know Mr. O'Donnell Rutherford?—A. I did not.

Q. You do not know of him?—A. No.

Q. Did you ever hear of him?—A. Yes.

Q. Was he your local salesman?—A. He was a substation agent.

Q. At what place?—A. At Gallatin, Tennessee.

Q. Mr. Holt left your—his name was C. E. Holt, wasn't it?—A. I would not verify it, but the way I happened to be impressed with Mr. Holt was that I was present at the cross-examination of Mr. Holt, and in that way I saw him and sized up the——

Q. He was indicted with Mr. Rutherford, wasn't he?—A. Yes.

Q. And the Standard Oil Company?—A. Yes.

Q. In Tennessee?—A. Yes.

Q. For entering into a conspiracy and making an unlawful contract with a man by the name of Love and certain other merchants there, for the purpose of lessening competition, was he not?—A. I think that is what the indictment charges.

Q. Yes. Mr. Holt was tried and convicted, wasn't he?—A. Yes.

Q. And sentenced to pay a fine of $3,000?—A. That is correct.

Q. And your company paid the fine, didn't you?—A. I believe we did, sir.

8424 Q. Yes, and the Standard Oil Company was ousted from doing business in the State of Tennessee, was it not?—A. That is the record.

Q. Yes, sir; a suit was brought by the State of Tennessee against the Standard Oil Company for entering into an unlawful conspiracy, was it not?—A. That is the record.

Q. You testified in that suit, didn't you?—A. I did.

Mr. ROSENTHAL. Was that in violation of their State antitrust law?

WITNESS. Yes.

Q. And it was tried in the State court, and the company found guilty, and ousted from the State, was it not?—A. That is correct.

Mr. ROSENTHAL. That was the judgment.

WITNESS. Yes, that was the judgment.

Mr. ROSENTHAL. And it is pending on appeal now.

Q. It was sustained by the Supreme Court of Tennessee, was it not?—A. That is correct, sir.

Mr. ROSENTHAL. And it is now before the Supreme Court of the United States. Do not forget that.

Q. Now you looked up the circumstances of that case, didn't you?—A. Oh, yes.

Q. And directed the company's lawyers to defend the case, didn't you?—A. Yes.

Q. Now, what were the circumstances?

Mr. ROSENTHAL. I object, upon the ground that it is wholly immaterial, and upon the further ground that it is not cross-examination——

8425 Q. What were the circumstances?

Mr. ROSENTHAL. And it has not anything whatever to do with this case.

The EXAMINER. Go ahead and answer the question.

WITNESS. Shall I go ahead and answer it?

Q. Yes, answer the question.—A. The facts were that Mr. Holt, on his own initiative and responsibility, called on two or three merchants who had placed an order with the salesman of the Evansville Oil Company, who happened to be in Gallatin a day or two before Holt's visit there, and he found out that this Evansville man sold a car of oil, found out some of the principal buyers, and on his own initiative, without ever taking the matter up with any superior officer, he and Mr. O'Donnell Rutherford go around and see these people. They were friends of Rutherford, and they got into some kind of a dicker and discussion about countermanding the order that they had placed with the Evansville Oil Company; and Holt and Rutherford, after a consultation between themselves, agreed to give each of these men a hundred gallons of oil if they would countermand these orders.

Q. And they did give them the oil, didn't they?—A. They did give them the oil.

Q. And they did countermand the order, didn't they?—A. They did countermand the order. Now, Mr. Holt said to Mr. Rutherford—so Mr. Rutherford stated in his evidence, I think—that we will keep this matter to ourselves. I will pay for the oil that we have given away.

I have not the money now, but before you have to turn in your
8426 stock reports on the last day of the month I will make good this value of these 300 gallons of oil. Well, it turned out that Mr. Holt was not able at that time to make good, and so Mr. Holt rendered—I mean Mr. Rutherford—in returning his inventory for the end of the month, turned in the 300 gallons more than he had in his storage in order to conceal this fact that they had given this oil away. We have a system of auditors that drop in occasionally on a subagent and take an inventory of their stocks and send it in to the main office; and my recollection is, and I think it is brought out in the evidence, that when Rutherford found out that this man was going to take his stock he said "I am short, and I want to go up to Nashville and see Mr. Comer, the manager, and I will explain how I happened to be short;" and he went up there and explained it, and that was the first that Mr. Comer knew anything about this transaction of giving away the oil. He reported it to me and I told him that I felt very much like we ought to discharge Mr. Holt, because it was a thing that was absolutely contrary to the rules of the company, and we would not have permitted it or considered it for a

moment any such proceedings; but he said Holt was a very zealous, able young fellow, and that he had made a mistake; that he thought we ought to give him a little further trial. Of course, at that time my recollection is that we did not know that any legal proceedings were going to be had over it, but Mr. Comer, I remember, testified that he absolutely—he reprimanded Mr. Holt very severely for it, and also Mr. Rutherford, for their act in the matter, and, above all,

8427 furthermore, for concealing—attempting to deceive the company by making a false report of stocks.

Q. Did you discharge Mr. Holt?—A. No, we did not.

Q. You kept him how long?—A. We kept him until after this trial was over.

Q. And then discharged him?—A. No; we did not. We never discharged him. He went out to join his mother, out in Oklahoma. The family moved out there somewhere, and he went out there to live.

Q. Now the fact is that the Evansville Oil Company was an independent company, a competitor of yours, was it not?—A. That is correct, sir.

Q. And it sold a carload of oil to four merchants of Gallatin, didn't it?—A. No; I think—they were the four principal buyers and they got an inside price. There was a lot of other little fellows that bought some oil.

Q. S. W. Love, W. H. Lane, J. E. Cron, and L. C. Hunter were the merchants, were they not?—A. My recollection is that three of them took 10 barrels each and one took 5 barrels, and that made 35 barrels, and they shipped 70 barrels in the car, and there was 35 barrels sold in small lots, 1 and 2 barrel lots, to other merchants.

Q. And the four men countermanded their orders?—A. It was three only.

Q. Four, wasn't it?—A. No.

Q. Three of them countermanded their orders?—A. I think it was three. Each got a hundred gallons.

Q. Two of them got 50 gallons apiece, did they not, making the 300 gallons?—A. Well, it is in the record, whatever is there is correct. I don't remember that.

8428 Q. Now, that was given to them out of the tanks of the Standard Oil Company of Kentucky, wasn't it?—A. Yes, sir; but without the consent of the Standard Oil Company.

Q. And for the purpose of getting them to countermand their orders?—A. That was the purpose of those individuals, but they were not authorized to do it.

Q. You investigated the whole transaction, didn't you?—A. What transaction do you mean?

Q. The whole transaction. You testified in that case, didn't you?—A. Oh, yes.

Q. You heard that this carload of oil that the Evansville Oil Company sold was shipped into Gallatin, was it not?—A. Yes.

Q. And the merchants did not take it?—A. I think that is the case, and that is what started up the law suit.

Q. Then, it appears that your agent went and put the local authorities on them and made them pay a license, didn't they?—A. Well, I don't know about that.

Q. That appeared in the case, didn't it?—A. Not from me.

Q. You heard it, didn't you?—A. I did not.

Q. It was proved in the case, wasn't it?—A. I don't think so.

Q. You don't think so?—A. Not in the last examination. It may have been down there. The case was tried twice. That might have been done.

Q. The criminal case?—A. That was tried twice.

Q. The criminal case was tried first?—A. Yes. It may have been brought out in that, but I didn't hear any such evidence while I was there.

Q. The court held that the Standard Oil Company of Kentucky was guilty, didn't it?—A. Yes; there is no doubt about that.

8429 Q. And the Supreme Court sustained it?—A. The Supreme Court of the State of Tennessee did.

Q. Now, there was another transaction in that case, was there not, besides this countermanding of orders? Do you know a man by the name of William M. Cassetty?—A. Oh, yes.

Q. Who was he?—A. He was at one time connected with an oil company in Nashville.

Q. Cassetty and his partners owned an oil company in Nashville, Tennessee, didn't they?—A. He was interested in it at one time.

Q. Yes; but in the last eight or ten years I think Cassetty——

Q. They were independent dealers, were they not?—A. The Cassetty Oil Company were; yes.

Q. You made a deal with them, didn't you?—A. Yes. There is a copy of the arrangement we had with them in there, whatever it is.

Q. They were selling oil in competition with your company, were they not?—A. Yes.

Q. In Tennessee?—A. Yes.

Q. In Nashville?—A. There were two or three other concerns.

Q. Well, I am talking about this one now.—A. Yes; that was one.

Q. In October, 1899, you entered into a contract with them to act as your agents for five years, didn't you?—A. Yes.

8430 Q. And paid them about $500 a month, didn't you?—A. I don't remember the exact figures, but it was equal to the value of the use of the plant and the equipment.

Q. And they ran it for you?—A. They did.

Q. As the Cassetty Oil Company?—A. Yes.

Q. Holding themselves out as independent?—A. I don't know just what they did do about that.

Q. You never heard them advertise during that time that they were working for the Standard Oil, did you?—A. No; I did not.

Q. You understood they were holding themselves out as independent, didn't you?—A. I did not understand anything about it. I left that matter entirely with them, with their conscience.

Q. Oh, you did?—A. Whatever they wanted to do about it.

Q. They did hold themselves out as independent, didn't they?—A. I think it is quite likely.

Q. So they fixed that up with their conscience, and then held themselves out as independent?—A. I don't know what they said to their customers.

Q. You never heard of their advertising themselves as agents, did you?—A. No; I will agree to that.

Q. Now, what motive would they have to keep that secret except to help you?—Do you know of any?

Mr. ROSENTHAL. Wait a minute. I object to having the witness guess the motives of some other person who is not a party or a
8431 witness to this case, and I desire to instruct him that he is not under any obligation whatever to make a guess of that kind.

Q. Do you wish to answer?

Mr. ROSENTHAL. Do you want to guess at that?

WITNESS. No; I——

Q. Do you decline to answer?

Mr. ROSENTHAL. You do not have to guess.

WITNESS. No; I prefer to give my testimony as nearly as I can to the actual facts that I know of.

Q. Do you know of any motive or any interest they would have to keep that secret?

Mr. ROSENTHAL. I object to that for the same reason, and give the witness precisely the same instruction.

WITNESS. I would have to guess at that, because I can't tell what their motives may be.

Mr. ROSENTHAL. Wait a minute, Mr. Collings. Give me a chance to get in my objection.

Q. They got a fixed payment for whatever amount of oil they sold, didn't they?

WITNESS. Can I go on, Mr. Rosenthal?

Mr. ROSENTHAL. Yes.

Mr. KELLOGG. Certainly, go ahead.

Mr. ROSENTHAL. You can testify to any fact that is within your knowledge.

Q. I show you a contract marked Exhibit A (pages 193, 194, and 195 of this record in the Tennessee case), and ask you if that is a copy of the contract you made with the Cassetty Oil Company.—A. Yes, I think that is. I think I saw the original of that at the time this case was pending. Of course I have not compared it. I did not compare it at the time, but our attorneys passed it, and there-
8432 fore I imagine—I assume it can be certified to as a copy. I did not compare it.

(The printed record in the case of the State of Tennessee ex rel. Charles T. Cates, jr., attorney-general, vs. Standard Oil Company,

of Kentucky, in the Supreme Court of Tennessee, December term, 1907, appeal from the Chancery Court of Sumner County, Tennessee, was handed to Mr. Rosenthal.)

Mr. ROSENTHAL. I object to it on the ground that it is immaterial.

Mr. KELLOGG. You do not object to it on the ground that it is not the original?

Mr. ROSENTHAL. Not if you say it is a copy. I do not know anything about it.

Mr. KELLOGG. It has been sworn to by your people in that case.

Q. You believe that to be a copy?—A. I said I assumed it must be a correct copy, because our attorneys were present when the original was produced.

Mr. KELLOGG. That is correct. It so appears in evidence. I offer that in evidence, and would like to have it copied into the record. You do not object to it on the ground that it is not the original?

Mr. ROSENTHAL. No, sir; I do not. I object to it upon the ground that it is otherwise immaterial.

The contract referred to by Mr. Kellogg is as follows:

"EXHIBIT A.

"*To deposition of Wm. M. Cassetty.*

"Memorandum of agreement, entered into this the 30th day of October, A. D. 1899, by and between the Standard Oil Com-
8433 pany of Kentucky, incorporated, party of the first part, and the Cassetty Oil Company, incorporated, party of the second part, the said Cassetty Oil Company, being located at Nashville, Tennessee.

"Witnesseth, that the above parties hereby enter into the following agreement, this agreement to continue for a period of five years from November 1st, 1899, and to terminate October 31st, 1904.

"For and in consideration of the conditions hereinafter named, the said party of the second part does hereby sell, convey, and assign to the said party of the first part, for the period covered by this agreement, all interest in the results or profits in the refined oil or gasoline business owned, controlled, and operated by the said party of the second part.

"The party of the second part hereby agrees and binds itself to conduct the said refined oil and gasoline business in its own name as heretofore, giving the business such time and attention as required, utilizing all employes in the handling of the business as it has heretofore been handled, and in all particulars to give the business the same attention as if it were still being conducted in the interest of said second party; the party of the second part further agrees to be governed by and to follow in all particulars the directions of the party of the first part, in the handling and marketing of said refined oil and gasoline during the existence of this contract.

"It is also agreed and understood that the party of the second part is to furnish the entire equipment requisite for handling the said
8434 refined oil and gasoline business, such as requisite storage tanks, warehouses, and storage room, and all requisite facilities and appliances connected with the preparation and filling of barrels and other packages with said refined oil and gasoline; such storage tanks and warehouse buildings to be of good and sufficient character for the proper protection of the goods, wares, and merchandise belonging to the party of the first part used in the handling of said refined oil and accountable for same, excepting the case of loss by fire or other causes or calamity, against which reasonable precaution on their part could not have prevented.

"The party of the first part is to furnish the party of the second part all such stocks of refined oil and gasoline, empty barrels, glue, paint, bungs, etc., as may be required for the handling of said refined oil and gasoline business; all such oils are to be consigned to the party of the second part in tank cars, they to receive same and properly unload all such tank cars on arrival. It is understood, however, a change in the method of supply of refined oils or gasoline may be made, by mutual agreement of the parties hereto, to meet any exigencies that may arise.

"The party of the second part agrees and binds itself to furnish all the requisite labor necessary in the handling of said refined oil and gasoline business, cooperage of barrels or packages, preparation and filling of same, draying and delivering, receiving and unloading refined oils or gasoline, and to furnish all clerical help requisite for the
8435 keeping of accounts, necessary office room, account books, stationery, etc., used in the conduct of said refined oil and gasoline business; also to furnish the requisite salesmen for the selling and marketing of said refined oils and gasoline, without expense or cost to the party of the first part, except as hereinafter named.

"The party of the second part further agrees and binds itself to furnish to the party of the first part monthly reports of sales of all refined oils and gasoline sold by said second party, and also stocks on hand, and any other reports deemed necessary to intelligently follow the business; and the said party of the second part binds itself to pay in cash, by the end of each month, for all sales made during the previous month, it being understood and agreed that the said party of the second part guarantees all sales made by it.

"The party of the second part further agrees and binds itself to aid and assist in every way possible the development of the refined oil and gasoline business, and to give its support and cooperation toward furthering the general interest of the party of the first part.

"In consideration of the foregoing, the said party of the first part agrees and binds itself, during the existence of this contract, to pay to the party of the second part the sum of three hundred and thirty-three ($333.33) dollars and thirty-three cents per month, or at the rate of four thousand ($4.000.00) dollars per annum; and, in further consideration of the labor and expense connected with the handling of

said refined oil and gasoline business, the party of the first part agrees to pay to the party of the second part, as compensation
8436 for such labor and expense, the additional sum of one hundred and sixty-six ($166.66) dollars and sixty-six cents per month, or at the rate of two thousand ($2,000) dollars per annum. Should the total number of gallons of refined oil and gasoline handled by the party of the second part exceed during any one year two hundred thousand (200,000) gallons, the party of the first part agrees to pay to the party of the second part one (1) cent per gallon on such excess. The aforesaid payments to be made monthly, at the end of each month.

"Witness the signatures of the parties hereto, this the 30th day of October, A. D. 1899.

"STANDARD OIL COMPANY OF KENTUCKY,
" By ALEX MCDONALD, *Pt.*

"Witness:
"C. T. COLLINGS.

"CASSETTY OIL COMPANY,
" By JAMES R. MCILWAINE, *V. P.*

"Witness:
"VENABLE PITTS."

Q. Did you assist in making that deal?—A. What deal was that?

Q. With the Cassetty Oil Company?—A. I think I did, sir.

Q. You signed the agreement, as a witness, I take it?—A. Yes. Mr. McDonald is the president of the company.

Q. Now it appears that you are to pay him $500 a month—$333.33 per month, and $166.66 for expenses, without respect to the amount of oil that he sells.—A. Yes.

Q. Is that your understanding?—A. Yes.

Q. So he had no interest at all to keep secret the fact that he had made this deal, had he?—A. I think he had.

8437 Q. What?—A. He had certain trade-mark brands, and if it was known that he had leased those out to the Standard Oil Company, when he went back, which he would do, and did do at the expiration of the agreement, that his trade would be injured by it. That is probable.

Q. Now, that is just exactly what I thought.—A. What?

Q. That is just exactly what I thought.

Mr. ROSENTHAL. Then you are both together on that.

Q. He kept the secret, didn't he?—A. I don't know about that. As I told you, I don't know what they did with their customers; but the initiative in this matter was started by Mr. McIlwaine, the vice-president of the company.

Q. During that five years you had all the profits of the company and sold them all their oil?—A. Yes.

Q. And they operated it for you?—A. Yes.

Q. Well, that fact was shown in this case, too, was it not?—A. Yes.

Q. You made Mr. Rutherford and Mr. Holt pay for that oil, did you?—A. Yes.

Q. What price?—A. They paid the full price—the market——

Q. The market price?—A. Yes.

Q. Didn't they pay a nominal price?—A. I suggested that, I think, as all employees of the company are permitted to buy oil at practically about what it costs the compar

Q. Didn't you testify that they paid a nominal price simply for it?—A. No, I did not.

Q. You think you did not?—A. No; I think you will find in the evidence there the fact that they actually paid the market value for the oil. You will find it in Mr. Comer's testimony.

8438 Q. Paid the market value—what was it?—A. I do not recall that. They paid the market price for it.

Q. You did not approve of their getting this order countermanded?—A. I certainly did not.

Q. You have never done any of that kind of business?—A. No, sir.

Q. You have never been cognizant of that having been done at any other place?—A. I never heard of it.

Q. Never heard of any such case?—A. I certainly did not, sir.

Q. You never heard of your company, through your agents, getting merchants to countermand a competitor's order?—A. You said similar to this case? That is, giving away oil for that purpose, or giving away a consideration of some kind?

Q. Didn't you testify in relation to that in this case?—A. I don't remember. I testified, I know, most emphatically——

Q. Did you testify to this: "You say that your company does not do this kind of business, about revoking orders?—A. It does not. I never heard of such a case until this thing came up.

"Q. Your company does not do anything to crush out competition?—A. It does not do anything in that way. There are a great many ways of crushing. Some crush out themselves." Did you testify to that?—A. Yes.

Q. What did you mean when you said that you never heard of a case of your company doing that kind of business?—A. That is, giving away oil to have an order countermanded.

Q. They do get orders countermanded in other ways, do they?—A. Well, I do not recall any now.

Q. You do not recall any. Did you ever hear of any?—

8439 A. But I referred to that particular case when I was testifying there.

Q. You don't recall any case where your agents have gone around and got their competitor's orders countermanded?—A. No, I don't recall any cases.

Q. Now, didn't you go further and say that you did not permit your people to secure the countermanding of orders?—A. We do not when we know it.

Q. Did you testify to that?—A. I don't recall that, sir.

Q. I ask you if you testified to this: "Q. What is the usage or custom of trade, if there is any such usage or custom of trade, espe-

cially throughout the territory in the State of Tennessee and elsewhere, in regard to countermanding orders?—A. There is no such rule or usage. We do not permit our people to secure countermanding of orders." Did you testify to that?—A. Yes.

Q. You did?—A. Yes.

Q. Then it is true, is it, that you don't permit your people to secure countermanding of other people's orders on any ground?—A. Well, I meant there on any grounds of giving away, or giving anything away, or offering a consideration.

Q. Did you say that?—A. I don't remember that.

Q. You don't remember saying that?—A. No.

Q. You said absolutely that you did no permit your people to secure countermanding of orders, didn't you?—A. Well, if the matter had ever come to my attention I would have stopped it.

Q. You would have stopped it?—A. Yes.

8440 Q. Did any such case ever come to your attention?—A. Well, I think we may have had some cases where by meeting a price we could secure a countermand in orders.

Q. And did you stop it?—A. It was done before I got hold of it.

Q. Did you stop it?—A. Well, the sale had been made.

Q. Did you stop that practice?—A. I don't recall.

Q. Isn't it a fact that that practice was universal all over your territory?—A. No, sir.

Q. And that you instituted it?—A. No, sir, it was not, sir. I say most emphatically it was not. There were two or three sporadic cases came up. This was the worst case we ever had to deal with.

Q. Those sporadic cases are where we have the evidence of them, are they not?—A. I don't know about that. I know in this case all the evidence goes to show that the minute we heard of it we denounced the proceeding right from the start. Now, if it had been the practice we would not have done it.

Q. When did you hear of it?—A. We heard of it when we found this man was short in his accounts.

Q. At the end of the month?—A. If that man knew we were in the habit of canceling orders he would not have concealed the fact about giving the oil away; and the evidence shows, and they both testified to the fact that they knew they were not permitted to do it, and that they were doing a thing that would not be recognized, that they would probably be fired for doing it. That is why they

8441 concealed it. They both testified to that fact, and the evidence shows, and the facts show, that they did conceal it.

Q. When did you discover it?—A. I discovered it first of all by seeing a clipping out of a newspaper that a suit had been brought, and I wrote to the agent in Nashville to ask him what it meant, and a letter from him to me crossed in the mail in which he explained that he had just heard of this thing through this fellow confessing that he had stolen the oil—that is, that he had taken the oil out of our tanks and given it away.

Q. As a matter of fact, you did not hear of it at all through the examination of the accounts. You heard of it through the newspapers when the suit was brought?—A. I did, but I am talking about the agent at Nashville that he heard of it and wrote me about the same day that I wrote him. That was the first we knew of it.

Q. You say there are some sporadic cases?—A. Well, I say that occasionally we hear of one of our competitors complaining that our men have gone in after they have gotten an order and gotten the merchant to countermand it by agreeing to meet the price, or furnishing them a better grade of goods, or some proposition. Those cases have come, but it has been quite a long while since we have heard of any——

Q. You quit it about the time the Department of Commerce and Labor got to investigating your methods, didn't you?—A. If you read the record in that Tennessee case you will see we quit it before then, because we absolutely denounced those people for doing any such thing.

8442 Q. When was the Tennessee case tried?—A. You will find from the testimony further in there, Mr. Coons and Mr. Cromer, who have been agents for the company for twenty years, testified, each one of them, that they had never heard of a case of that kind, where an attempt was made——

Mr. ROSENTHAL. He is not looking for that part of the record.

Mr. KELLOGG. I will put the whole record in if you desire it.

WITNESS. It is in that record.

Mr. KELLOGG. I offer this record in evidence as part of the cross-examination of this witness.

WITNESS. You will find the testimony of two of our most able and conscientious men in there that they have handled that southern field, and in their testimony they state that they have never heard of a case of this kind, and that they had never authorized it or countenanced it.

Mr. ROSENTHAL. I will take leave to examine this record before determining whether I will object to it or not.

Mr. KELLOGG. If you will consent, I will put it in now.

Mr. ROSENTHAL. I will take leave to examine it before I determine whether I will consent or not. Does the offer stand?

Mr. KELLOGG. Yes. And your counsel have examined it a good many times.

WITNESS. I say you will find that——

Mr. ROSENTHAL. All I want to know here is whether that offer, to put that record in evidence, stands?

Mr. KELLOGG. Yes.

Mr. ROSENTHAL. Subject to my leave to object after I have examined it?

8443 Mr. KELLOGG. Yes; it does.

Mr. ROSENTHAL. Very well, that is all. Those bluffs, you know, are sometimes called. Is the cover of this record offered, too?

Mr. KELLOGG. Yes.

Q. What men had authority to sign your name, in your office, during the last eight or ten years?—A. Well, there was Mr. Stanley—in his department.

Q. Mr. Stanley?—A. Yes.

Q. What is his full name?—A. E. B. Stanley.

Q. What position did he occupy?—A. He was general manager.

Q. General manager of the Standard Oil Company of Kentucky?—A. Yes.

Q. Who else?—A. Mr. C. H. Hand, who succeeded him. He is general manager.

Q. Now, who else?—A. There are subordinates in writing letters that are handled in my department. Any of Mr. Hand's or Mr. Stanley's subordinates, in writing letters, would follow the same lines that Mr. Stanley or Mr. Hand would follow.

Q. Mr. D. P. Sanford and others?—A. Mr. Sanford was under Mr. Stanley.

Q. Yes; but he was in your office.—A. Well, he wrote letters for Mr. Stanley.

Q. He also wrote letters for you, didn't he?—A. No; I don't think he did.

Q. You don't think he did?—A. No.

8444 Q. He had authority to write letters for Mr. Stanley?—A. Yes.

Q. And he wrote letters himself?—A. Yes.

Q. He had authority throughout the district?—A. Yes.

Q. What was his position—assistant general manager?—A. No; I don't think he had a title.

Q. But he was working for Mr. Stanley?—A. Yes; he was in Mr. Stanley's department.

Q. Had the same authority that Mr. Stanley had when Mr. Stanley was away, hadn't he?—A. Well, I don't know about that.

Q. He exercised it, didn't he?—A. He may have done so; I don't know.

Q. Who else?—A. Mr. Holmes, the treasurer.

Q. Mr. Holmes, the treasurer?—A. Yes.

Q. Mr. Kimball, the assistant treasurer?—A. No; Mr. Kimball, I do not think, ever wrote any letters.

Q. Anybody else?—A. I can not recall any.

Q. And the stenographers who took the dictation had authority to sign?—A. Yes.

Q. That was customary, was it?—A. Yes.

Q. Who was Mr. R. N. Reed, of Atlanta?—A. He was a special agent.

Q. A traveling special agent?—A. No; he was located permanently.

Q. How much territory did he have?—A. He had a good big portion of Georgia, nearly all of it.

Q. Nearly all of it?—A. Yes.

Q. Lived at Atlanta?—A. Yes.

Q. Who was Mr. A. C. McGee?—A. I don't know.

8445 Q. He was your agent at Pelzer, South Carolina, wasn't he?—A. I don't know.

Q. Never heard of him?—A. I can't recall him.

Q. You don't recall him?—A. No.

Q. Did you ever hear of Pelzer, South Carolina?—A. Oh, yes.

Q. You have a station there, haven't you?—A. Yes; we did have.

Q. A tank station?—A. It is not now under my jurisdiction. We sold it.

Q. But it used to be?—A. I think prior to 1906.

Q. You sold it to another Standard Oil company, didn't you?—A. Sold it to the Standard Oil Company of New Jersey.

Q. But prior to 1906 it was under your jurisdiction?—A. Yes.

Q. Mr. A. C. McGee was your agent there, wasn't he?—A. I don't recall him.

Q. You don't recall him?—A. I don't think he was, sir. I think if we had a man at Pelzer, I would remember his name, if he was there any length of time. Of course, if he was a man that would go in there for three or four months and go out, I would probably forget him.

Q. Did you have a station at Roanoke, Alabama?—A. I think we have; yes, sir.

Q. Had one at that time?—A. A very small one. It is only a small town.

Q. Do you know Mr. B. O. Driver, who was your agent there?—A. Mr. Driver, I think he was. I can't positively say as to that, but I can look that up.

Q. Who is Mr. Warren D. Arthur?—A. I don't know.

8446 Q. Did he work for the Standard Oil?—A. I don't think he did.

Q. Was not he an agent of yours?—A. I can not recall him.

Q. These letters, signed with your name, "F. B."—who was F. B. that signed your name?—A. F. B. was Barline.

Q. Frank Barline—B-a-r-l-y-n-e?—A. B-a-r-l-i-n-e.

Q. Who signed the letters marked "H?"—A. I think that must have been Hobbs.

Q. What is his first name?—A. George H.

Q. George H. Hobbs—where is he now?—A. He is down in Kentucky somewhere.

Q. Working for you?—A. Yes.

Q. In the employ of the Standard Oil Company?—A. I think he is.

Q. Was he a stenographer in your office?—A. He was at one time.

Q. You have general charge of the business, have you?—A. Of the merchandising end of the business; I look after that.

Q. You look after that, and have since 1900?—A. Yes.

Q. And before that?—A. No, sir—well, since 1900.

Q. Before that, what was your position?—A. I was the general manager for the South.

Q. General manager for the South. Now, you testified yesterday, as I recall, that Greenville and Spartanburg were within your territory. A. Yes; they were in 1905, I think, and prior to that.

Q. But it is not now?—A. No.

Q. They are in South Carolina?—A. South Carolina.

Q. You say at that time—you testified to the difference be-

8447 tween the prices at Spartanburg and Greenville, didn't you?—A. Yes; I think you asked me some questions about that.

Q. Mr. Rosenthal asked you, didn't he?—A. Well, that is so.

Q. Did you receive a letter from Mr. R. N. Reed, your special agent, January 27, 1904, directed to Mr. C. T. Collings, vice-president, Cincinnati, Ohio, about the drawbacks or rebates allowed to the merchants at Spartanburg? And is that what you were referring to yesterday? [Handing witness Petitioner's Exhibit 690.]

Mr. Rosenthal. Take time to read the letter clear through, Mr. Collings, before answering.

(Witness reads the paper.)

Q. Did you receive that letter?—A. Yes.

Q. You did?—A. Yes.

Q. I do not hear you.—A. Yes.

Q. Very well—A. Yes, sir; I remember it.

Q. You remember receiving that letter?—A. I remember the incident because that was——

Q. And you answered it, did you?—A. I presume I did, sir.

Q. Now, I notice in this letter the following statement: "As soon as I received the information I made every effort to break up the carload, but was unsuccessful." So you got that notice, did you?—A. I did.

Mr. Rosenthal. He has said that he received that letter, and that he answered it.

Q. That was a carload of Red "C" oil, was it not?—A. I presume it was.

Q. It is so stated in this letter, isn't it?—A. Yes.

8448 Q. That the Red "C" Company had sold in Pelzer?—A. Yes.

Q. And your agent, R. N. Reed, wrote you that he made every effort to break up the carload, but was unsuccessful?—A. Probably the man was still on the ground, and——

Mr. Rosenthal. The question is, did he write that?

Q. Did he write that to you?—A. Yes.

Q. Did you reprimand him for it?—A. No; because I understood what he meant by it.

Q. Did you do anything—you understood what he meant?—A. Yes, sir; I did.

Q. Well, let us see if you did. That was the 27th of January that the letter was written?—A. Yes.

Mr. Rosenthal. What year?

Q. 1904, was it not?—A. Yes.

Q. Written by R. N. Reed, your special agent, at Atlanta, to you? That is correct, is it?—A. Yes.

Q. Now, let us see what efforts Mr. R. N. Reed—what did you say he did to break up the carload?—A. I assumed that he would pursue a perfectly legitimate method to do so.

Q. Now, let us see what he did do. You assumed that?—A. Yes; that is, in other words, that he would, if the merchants demanded that they would order this car unless we reduced our price, that he would concede to their demands and thereby stop the car.

Q. Now, the object in breaking up that carload was so that the Red "C" would not sell any more oil there, was it not?—A. Sure.

Q. Now, let us see what——A. We are not going to turn our
8449 trade over to the Red "C" Company if we could hold it by meeting their price.

Q. I show you a letter, Petitioner's Exhibit 686, dated January 25, two days earlier, written by Mr. R. N. Reed to A. C. McGee, agent, Pelzer, South Carolina, in which Mr. Reed says: "If you"——

Mr. ROSENTHAL. Let him see the letter. Is that in evidence?

Mr. KELLOGG. Certainly, it is in evidence.

Mr. ROSENTHAL. Oh, that is all right.

Q. I show you a copy of the letter. The original exhibit is in evidence. I am reading from the copy of the exhibit, in which Mr. R. N. Reed says, referring to this carload of Red "C" oil at Pelzer: "If you can break up this carload order, you have my permission to reduce your price one-half cent per gallon in Pelzer. Now, please interview all of the merchants at once, explaining you will give them one-half cent below the market if they will cancel their orders; and if you are successful, please wire me at once and I will send you regular form reducing your market; but you need not wait to receive that, but put the reduction into effect at once."—A. That is very simple.

Q. Well, that is the effort he made to cancel the order, isn't it.

Mr. ROSENTHAL. Go ahead with your explanation of it.

WITNESS. It is a very simple, reasonable, right, proper method.

Q. It is?—A. If you will refer to that letter of Mr. Reed,
8450 you will see that the Red "C" Oil Company cut our price a cent a gallon to this trade, to our trade, to our own customers, and Mr. Reed simply authorized his agent to reduce his price a half a cent. In other words, we did not meet the Red "C" price. We said: "If you can hold your trade with a half-cent reduction, you can do so."

Mr. ROSENTHAL. Against their one-cent reduction?

WITNESS. Against their one-cent cut of our price.

Q. You tried to get him to countermand the order, didn't you?—A. Why, certainly. I don't know whether they had actually given the order or not.

Q. Then, when you testified in this case that you never did that, you did not testify to the truth, did you?—A. No; that won't do—that statement won't do. This was a legitimate proposition. I don't

know whether the orders had actually been placed or not. This salesman might have been in the town of Pelzer trying to make up a carload of oil, and these merchants said to our agent: "If you do not meet this price, we will order a carload," and he wires or writes to our agent at Atlanta, and the agent says: "Why, yes; to do that," and he already had authority from me to lower all the markets in South Carolina, because I found Red "C" were indiscriminately cutting our prices a cent to a cent and a half a gallon at every point.

Q. In this same letter in which he told Mr. McGee to cut the price one-half cent below the market, in order to get them to cancel their orders, doesn't he say, "Now, the main thing you have overlooked. You have failed to give us the price at which they made the

8451 sales." How do you know they made sales under?—A. Why, it was in that letter, in that first letter you showed me there.

Q. This was a letter written January 25. I ask how your man knew at that time when that——

Mr. ROSENTHAL. I submit——

Q. Wait a minute. I ask you how Mr. Reed knew they had sold oil below your price, when in January 25 he said he did not know the price?

Mr. ROSENTHAL. Wait a minute. What letter are you reading from now?

Mr. KELLOGG. The letter written January 25.

Mr. ROSENTHAL. A letter of Mr. Collings?

Mr. KELLOGG. Wait a moment. I am reading from the letter of January 25, 1904.

Mr. ROSENTHAL. Written by whom?

Mr. KELLOGG. Written by Mr. Reed, Mr. Collings' agent, to A. C. McGee, directing the local agent of the Standard Oil Company at Pelzer to cut the market one-half cent, in order to get these orders canceled; and in the same letter Reed says he doesn't know the price that the Red "C" Oil man was selling at. Is that true?—A. I think he says so in the previous letter.

Mr. KELLOGG. No, he does not.

Mr. ROSENTHAL. Is that true?

Q. Is it true that he states in that letter——A. He does state in this letter——

Q. Then, when he gave the direction to countermand the order, he did not know the price, did he?—A. I think he did.

Q. He says he didn't, doesn't he?—A. I think he slipped up on that. If you will refer to the previous letter you will see

8452 there where the Red "C" cut the price a cent a gallon.

Q. Will you show me any previous letter?—A. There is one there that you showed me a few minutes ago.

Q. That is one subsequent?—A. They were cutting the price a cent a gallon at all points. We knew that. We have got a half a dozen cases of that, right in there, those letters you are reading from, and there is not a shadow of doubt about it. Of course Mr. Reed naturally wanted this man to state. He may have had other sources of

information. He had it probably from the salesmen or some other source, but he wanted to put Mr. McGee on notice that every time he reported competition, or an order, or losing trade, that he should always state exactly and definitely what the competitor's price was.

Mr. ROSENTHAL. What do you mean by a half a cent below the market—the Standard Oil market price, was it not?

WITNESS. They cut our price a cent a gallon.

Mr. ROSENTHAL. I know, but when that letter speaks of a half a cent below the market, that means the old Standard Oil price, doesn't it?

WITNESS. Yes, it says so there. In other words, it reduced the price half a cent.

Q. Well, now, if you will just come back to that letter of Mr. Reed's——A. Yes.

Q. January 25?—A. Yes.

Q. He states there, when he directed Mr. McGee to cut the price to get the orders canceled, that he didn't know what the price was, doesn't he?—A. He states that Mr. McGee did not give it to him.

8453 Q. He doesn't say that he did know it, does he?—A. No.

Mr. ROSENTHAL. Does he say that Mr. Reed did not know it?

WITNESS He states that Mr. McGee——

Mr. ROSENTHAL. Now the question Mr. Kellogg asked you is this, whether Mr. Reed——

Mr. KELLOGG. Let the reporter read the question.

Mr. ROSENTHAL. The question Mr. Kellogg asked you was whether Mr. Reed in that letter stated that he, Reed, did not know the price. Let us have an answer to that question. You are both going all around it.

(Witness examines the letter.)

Mr. ROSENTHAL. Does Mr. Reed say anything about that?

WITNESS. Here are his words: "Now the main thing you have overlooked. You have failed to give us the price at which they made the sale." It does not say that he did not know.

Mr. ROSENTHAL. Well, now, we have got an answer.

Q. Now, you refer to the letter of January 27, 1904, for your authority that they had cut the price, don't you?—A. Yes, sir; I think there are some preceding cases where they had cut the price at other towns—Anderson.

Q. Have you got any other letters?—A. I think it is in that series you had on the table a day or two ago. We knew this man was going over the field endeavoring to make up carloads of oil at these South Carolina towns, cutting the price on a cheap grade of oil, representing it to be as good as ours, agreeing to sell it at a

8454 cent or a cent and a half less than our price, and naturally we made every effort we could to hold our trade and satisfy them.

Q. Now, it is a fact, isn't it, that the merchants there would buy of the Red "C" Company, even at the same price or a higher price, wouldn't they——A. I don't know.

Q. Because they were an independent company?—A. I don't think so.

Q. You don't think that is true?—A. No. We sometimes shoot that at our agents to scare them up.

Q. You shoot that at your agents to stir them up?—A. Yes, we tell them, "You are not holding your trade, you don't stand well with your trade."

Q. Then, you would lie to the agents?—A. I don't call that lying at all.

Q. Just stating something that is not true?—A. That may be true, too. If you want to put a man on his mettle, you say, "You are not holding your business right in your own town. Here is an outsider that comes in and says he can sell oil better than yours. We don't understand it."

Q. That is what you would say to your agent?—A. Yes, try to keep them alive and awake to the requirements of the situation.

Q. Now, I will read you the letter from the agent to you, and see what he says.—A. Yes.

Q. Dated January 27, 1904, by this special agent, R. N. Reed, about this same transaction.—A. What is it—about the Pelzer case?

Q. Yes, the one you have right before you there in which he says:

"I regret to advise the Red 'C' Oil Company have succeeded
8455 in placing a carload of oil with the merchants of Pelzer, South Carolina. It seems there is an organization between the merchants in that town, and it was practically impossible for our agent to secure any information until one day after the car was sold, and the Red 'C' representative had left for other points. The sales were made at 15½ cents per gallon in barrels delivered, they agreeing to allow $1 for empties f. o. b. Pelzer, which would make the oil cost their merchants 13½ cents per gallon, bulk, less loss by leakage and expense of draying to and from depot, against our price of 14½ cents. From what I can learn, the Pelzer merchants have never been very friendly toward us, and are inclined to buy their oils from others, even at an advanced price. As soon as I received the information, I made every effort to break up the carload, but was unsuccessful."

Now, that would seem as though the Pelzer merchants—your agent was reporting to you that they were unfriendly?

Mr. ROSENTHAL. What about the price you quoted?

WITNESS. It verifies what I said.

Mr. KELLOGG. He figures it out that way.

WITNESS. That was a very plain, clear case, because it looks like the price caught them.

Q. Yes.—A. And if we had cut the competitors' price that much I suppose they would have put us in jail.

Q. Now, Mr. Reed complained to Mr. McGee about not receiving notice of this shipment of the Red "C" man's, didn't he?—A. Yes.

Q. Is that true?—A. I don't know about that.

Q. You don't know about that?—A. No.

8456 Q. I show you Exhibit 687, being a letter from R. N. Reed to A. C. McGee, your special agent, in relation to this same car of Red "C" oil, in which Mr. Reed states to Mr. McGee: "It is certainly unfortunate we could not hold the trade in Pelzer, and I have every reason to believe that now if you would throw this matter on personal grounds, explaining to the merchants that your position with the company depends entirely upon your holding the trade in Pelzer, calling their attention to your affliction, I certainly believe they would become more patriotic, and perhaps cancel their orders with the Red "C" Oil man." What affliction did he have that he was going to call the attention of the merchants to to get their sympathy?—A. I don't know.

Q. You don't know?—A. No; I don't know what was the matter with him.

Q. Was he a Confederate veteran with a wooden leg?—A. I don't know.

Q. And again, in the same letter: "No doubt there is some one merchant who has bought 15 or 20 barrels out of this car, and if we were successful in getting him to cancel his order with the Red "C" by wire, we paying for the message, it would mean it would break up this carload shipment, and in consideration of said merchant canceling his order we would agree to deliver to him the same quan-

8457 tity of oil that he bought in barrels from our tank wagon. In other words, our present market is 14½ cents in Pelzer. If the merchant who bought the largest portion of this carload of oil would break up the car, we would sell him the same quantity at 1 cent per gallon below our regular market. This is rather a delicate question to handle, and it certainly would not be wise to let more than one man in on the scheme, and you should certainly know some of them well enough to line them up on this question." Did he write that?—A. I have no means of knowing, more than you have submitted to me a yellow sheet of paper printed on there.

Q. Well, it is in evidence and sworn to as a letter written by Mr. Reed.

Mr. ROSENTHAL. Oh, no; it is not.

WITNESS. Who swore to it?

Q. Several of these letters, written on the same sheets, you have admitted.—A. No; I admitted the letters that were written to me, but this letter here I do not know anything about.

Q. Now, isn't it a fact that oil in barrels has to be sold for less than oil in tank wagons, anyhow?—A. No.

Q. In order to get the merchants to buy it?—A. No; a barrel—

Q. Barrel oil is sold for about a cent a gallon less, isn't it?—A. No; I think you are wrong about that.

8458 Q. Some of the men testified to that.—A. A barrel is worth $1 as a rule, and sometimes $1.25. That is 2½ cents a gallon. A man can sell his oil, and in that country they use those barrels for turpentine, and sell them for as high as $1.50 sometimes. That is 3

cents a gallon; pay 15½ and sell the barrel for $1.50, that is 3 cents off the price.

Q. I mean the net price to the merchant——A. What is that?

Q. Has to be at least a cent a gallon less.—A. Well, no; I think that is too much. I think you have got it too high. I think the merchant, on account of the advantage of tank wagon delivery, figuring the net price, after deducting the value of the barrel, will pay as high as a half——

Q. That is, he would pay less?—A. He would pay a shade more for the tank wagon oil—not a cent. We never have been able to find them where they would pay a cent.

8459 Q. You spoke about Union, South Carolina, where you sold oil to a wholesaler. Do you remember it?—A. I suppose you refer to the Union Cotton Mills. That is a large manufacturing concern that have a commissary.

Q. Warren B. Arthur, wholesale cotton buyer.—A. I think he was the agent of the company.

Q. He was the agent of the company?—A. At Union. That is my recollection.

Q. You remember him, don't you?—A. I do from the fact that he was in another business besides ours, a thing that I always objected to, but my recollection is that he handled the business on a commission basis. He was not a salaried agent; he was a commission agent.

Q. He was your agent there?—A. Yes; that is right.

Mr. ROSENTHAL. On a commission?

WITNESS. On a commission basis. I always objected to having an agent of that kind where he had other business besides our own, and that is the way I happen to remember this fellow.

Q. You objected to him, did you?—A. I objected to him on——

Q. Did you object to any of his methods?—A. I never knew of any "methods."

Q. I show you a letter, Petitioner's Exhibit 696, written by W. D. Arthur, agent, to the Standard Oil Company, Atlanta, Georgia, in which he states: "I have your letter of the 4th and note that you say it is reported to you that Mr. Metzel of the Red "C" Company has disposed of a car of oil here. Since reading your letter I have made the most strenuous efforts to obtain some information on this

8460 subject. The results are, that I can find no 'retailer' who has bought a single barrel of him. If you will refer to my letter confirming my 'phone conversation with Mr. Taylor along this line, you will see results of same." Further on he says: "I find, however, this afternoon, upon hard work, that it is possible that a jobber here by the name of 'Hames Grocery Company' is very anxious to represent Red "C" people, and it is possible he has agreed to take a car from them on consignment. This matter I will watch out for, and if he is going to get a car I would like to know it, and if he does get a car, I would like to have you assist me in seeing him and the Red "C" people 'sorry' they ever attempted such a thing. I will do my part if you will do yours. I have had some experience in business,

and if, in case this is facts, I would like for you to give me some little discretion, and I will see if I can't make some of that car lose in leakage. It is possible that this thing is only 'rumor,' still the car might be coming. I give it to you as I get it. Yours, &c., W. D. Arthur." Did you hear about that?—A. No, sir.

Q. What does he mean by "making the car lose in leakage?"—A. I suppose he means that he would sell the other merchants in the town at the price the Red "C" proposed to make him, and, as we had the benefit of tank-car delivery, they wouldn't buy any Red "C" oil in barrels, and Mr. Hames, or whoever he was, who had it in storage, would have to keep it—probably leak out; I don't know.

Q. Oh, that is it! He would see if he couldn't make it leak, I suppose.—A. No, of course not.

Mr. ROSENTHAL. That is not what he says.

8461 WITNESS. Mr. Arthur—he says he is a good business man there and he knows about these things. He is probably trying to apply some of his cotton-oil brokerage scheme to our business.

Q. He was your agent at that time?—A. Yes, but he was not authorized to initiate any policy of any kind. His business was to sell oil, and sell it at the price given him.

Q. Did you authorize Mr. Reed to make a special arrangement with some of these merchants in order to get this carload cancelled?—A. I don't know what car you are talking about.

Q. This Red "C" carload of oil at Pelzer.—A. I don't recall any.

Q. Or at Greenville.—A. I don't recall any.

Q. Or at Laurens. You don't recall any such special arrangement?—A. Oh, I might have done it; I don't recall.

Q. I show you a letter purporting to have been written by you, signed "C. T. Collings, F. B.," to Mr. R. N. Reed, February 25, 1904, in which you say——

Mr. ROSENTHAL. Wait a minute. I object to your getting the letter into the record in that way.

Mr. KELLOGG. It is in evidence already.

Mr. ROSENTHAL. Oh. All right.

Q. (Reading:) "Is there any reason why we could not make some special arrangement with one or the other of these concerns so that we would be safe against their going into any future carload orders?"—A. What place is this?

Q. Grenville and Laurens.

Mr. ROSENTHAL. Let him see the letter. He hasn't said

8462 that he wrote it.

(Petitioner's Exhibit 702 was handed to the witness.)

Mr. ROSENTHAL. Read it to yourself, and answer. The letter is already in evidence.

WITNESS. (After reading the letter.) Yes, I can explain it.

Q. What are the special arrangements?—A. That letter was written by me, no doubt.

Q. What were the special arrangements you were going to make with the merchants?—A. You will notice that each of these merchants referred to there bought twenty barrels apiece.

Q. Yes.—A. Now, a country merchant that can handle twenty barrels of oil in wood barrels without risk of leakage must do part of a jobbing business. He may not job all he buys, but he will probably sell half of it and re-sell; jobbing it to the country merchants. We treat those kind of merchants with a little more liberality than we do a small buyer. And our competitors taught us that. Every one of these men that took a 20-barrel lot received a half a cent better price than the man that bought five.

Q. Please make your explanation without stating what your competitors taught you.

Mr. ROSENTHAL. You go ahead and make your answer.

WITNESS. I am explaining how we happened to make a special price to a large customer. This man is a big jobber. I say so in the letter. They must be important merchants, jobbing oil.

8463 Q. What special arrangement were you going to make?—A. Give them a half cent lower price than we would make the smaller dealer.

Q. A rebate?—A. No; we probably billed it to him at half a cent less than the market.

Q. Now, did Mr. Reed write you in reference to making some special arrangement on March 1, 1904?—A. I couldn't tell you.

Q. What?—A. I don't recall.

Q. I show you a letter in which he says, in relation to this Laurens, South Carolina, matter, "We have a very good tank-wagon agent there, and I am reasonably sure they will find it uphill work to market their oil, excepting occasional barrel they may be able to dispose of to a farmer. We will watch all of the concerns mentioned in this letter and give you all the information we are able to gather. I have arranged to keep a memorandum of all parties who buy from the Red "C" Oil Co., but I do not believe they will make an effort to dispose of any more oil in carload lots until next fall, and between now and that time I will figure out the parties it might be advisable to make special allowances to and submit for your approval." Did you get that letter? (Handing petitioner's Exhibit 705 to witness.)—A. I very likely did. Yes; that is not an unusual proposition.

Q. You kept pretty close track of the details, didn't you?—A. I had to in the marketing end of the business; that is practically all I looked after.

Q. I thought you said a little while ago, in relation to this business in Illinois, that you didn't look after the details?—

8464 A. This, you will observe, is a merchandise proposition and goes to the very vitals of the business—the selling of the company's goods.

Q. So it is in Illinois, isn't it?—A. That was a little proposition about running a little peddling wagon; probably amount to a little peanut business. This is the lifeblood of your business. If those

fellows can go over into South Carolina and unload five or ten carloads of oil on you that puts you out of business in that territory from six weeks to three months, according to the consumption—puts you absolutely out of business; you don't do any business.

Q. And if they go over into Illinois and do the same thing there?—A. They didn't do business in Illinois that way; they had no carload competition of this character at all.

Q. And you thought it was important enough to run three secret companies up there—the Hamilton Oil Company and the Banner Oil Company and the Paragon—didn't you?—A. Those were small peddling outfits that did a little business, of probably a hundred gallons a day; didn't amount to a hill of beans.

Q. It was sufficient to run out a certain lot of competitors, wasn't it?—A. I don't think we ever ran them out.

Q. You don't think you ever did?—A. We have more to-day than we ever had.

Q. You never ran out the competitors?—A. I don't think we ever did. Some of them ran themselves out.

Q. Didn't some of those secret concerns that you mention
8465 have five wagons running at the same time?—A. I don't recall one.

Q. Didn't the Hamilton Oil Company have?—A. Three, if I remember correctly, is the highest number I ever heard of. I told you that is a detail I never paid any attention to.

Q. Where was that?—A. Terre Haute.

Q. How many wagons did your regular agent there have?—A. I can't recall.

Q. About how many?—A. Couldn't have had over three at the outside.

Q. And the independent company had three?—A. I don't recall.

Q. How big a place is Terre Haute?—A. I couldn't tell you.

Q. About?—A. I have no idea.

Q. It was big enough so that your main agent had three wagons?—A. Remember that Terre Haute is in a very rich territory.

Q. 30,000 people?—A. Oh, it isn't the town. That country is very thickly settled around there, and those wagons go out and operate through the territory.

Mr. ROSENTHAL. How did it compare with Denmark?

Q. You said the tank wagon of the Merchants Oil Company made $2,500 a year profit?—A. Three of them, and that shows how much margin there was in peddling oil.

Q. And that was your secret company?—A. I don't know about the "secret."

Q. You don't?—A. No.

8466 Q. We will see about that later.—A. I am not finding adjectives for describing the——

Q. Oh, no; you don't need any adjectives in describing anything.

Mr. ROSENTHAL. Let us cut the adjectives out.

WITNESS. We did simply what the other people did. We had to follow suit or lose the business.

Q. Did you testify that it was not your custom to have your salesmen follow the independents?—A. Not as a rule. In this South Carolina field it was a little different from anything else, as I have just told you. They skirmish around through there, bushwhack around on a carload basis in a way that we are not troubled with anywhere else.

Q. You were not troubled with that anywhere else?—A. Not on the carload basis. Our competitors fight us with tank wagons, but some of these fellows would go in for it in carloads and barrels.

Q. Then, you did direct your agents to follow these Red "C" men around, did you?—A. No; I did not direct them; but I would not have reprimanded them for finding out what they were doing. That is part of the business, to see what your competitors are doing. When they go out to bushwhack your trade, you go out to see what the men have got, who they have bagged, and what they have caught, especially to find out what prices they are making, so as to get in line with them, if necessary, to hold your business.

Q. I show you Petitioner's Exhibits 680 and 681 in this case, 680 being a letter written by you to Mr. R. N. Reed. Did you write that letter?—A. I did.

Q. You stated in there that you immediately wired him to
8467 lower all South Carolina points one-half cent per gallon on refined oil, didn't you?—A. I did.

Q. And the next day Mr. Reed wrote you the letter, Exhibit 681, didn't he?—A. Yes.

Q. In this he said: "Should he"—referring to the Red "C" Oil man——A. Yes.

Q. "Again visit any point in our territory they are to wire us at once and I am keeping in close touch with our refined oil man, so I can advise him promptly to locate the Red "C" Oil man and follow him until he leaves our territory, and by all means prevent him from securing orders for carload lots of refined oil." He reported that, did he?—A. He did.

Q. You didn't reprimand him for following him around?—A. No, sir. I wouldn't reprimand him for doing a thing that I think is perfectly legitimate and proper; that is, to look after your business and not let your competitor take it away from you. If we didn't do that——

Q. You assume you own all the business down there, do you?—A. We had established those stations and built up the trade and educated them to tank-wagon delivery, gave them conveniences of every description; and during the summer, when they couldn't have got oil from the Red "C" Oil Company except by paying about three prices for it, because they couldn't afford to bring it in in wood barrels, it would leak out before it got to them, we gave them the benefit of tank-wagon delivery and served them with oil at all times, during all seasons, when they couldn't get it from any other source, and we

have educated them to our system and ways of doing business.

8468 We have given good oil at a fair price. A bushwhacking concern like the Red "C" shoots a man out only at limited seasons, selling oil in barrels, that leaks out, and cutting our price from 1 to 1½ cent, selling a cheap grade of oil that is not as good as ours, but representing it as being much better, and talking, of course, against trusts and monopolies and every other thing of that sort, hocuspocusing the trade to make it buy a carload of oil. Now, we weren't going to let them take away our business on any such terms or conditions.

Q. And you were going to resort to any means to prevent it?—A. No, sir; not to any means. All we had to do was to satisfy the trade that this man had nothing to offer them; that he had a gold brick and was trying to get a better price, and, in some cases, when you figure out the value of the barrel and the quality of the oil, they weren't getting anything. But, naturally, we looked after our business; we didn't let the competitor take it away from us.

Q. You proposed to have it all?—A. Well, I don't know whether we had it all or not.

Q. You proposed to, I say.—A. We didn't propose to turn it over to people who did business that way. Where a man comes and plants himself right alongside of you and does business in the same way we do, we regard him in a different light.

Q. You don't cut prices in that case, do you?—A. We don't unless the other fellow does, because we are there first and have the business, and he can't get it unless he does something of that sort.

8469 Q. Now, you say that it was only after the Red "C" man had gone in and cut your price that you tried to break up the carload and tried to prevent them getting carloads?—A. Well, no. You will notice in this letter I told him to make a general reduction. I figured that if they cut the price at Laurens or Anderson, as the case might be, one of these points, they would pursue the same policy at other points, and in advance of their going in there and taking the business, I said: "It is not fair, and to give the other towns the benefit of the reduction."

Q. So you cut the price at every place where you thought they would be likely to go?—A. Where we knew they would go—where they had gone before and performed——

Q. Now, at Anderson, did you write Mr. Reed on the 29th of January: "I note that in order to take no chances of a car being made up at Anderson your salesman reduced the price at that point ½ cent. This is all right, as I authorized you to make a general reduction, if necessary."—A. Is that a question? Did I write that?

Q. Yes.—A. I did.

Q. Had they ever sold a carload of oil at Anderson?—A. They had.

Q. When?—A. On previous occasions.

Q. When?—A. I can't recall that.

Q. Do you know they ever sold a carload at Anderson?—A. I can most positively state that they have sold a number of carloads at Anderson.

Q. Have you information of that sort?—A. Certainly.

8470 Q. Where is your information?—A. I had it at the time.

Q. Whom did you get it from?—A. I got it from our agent at Atlanta, who had a man on the ground.

Q. In a letter?—A. I couldn't tell you.

Q. Did he ever write you to that effect?—A. I presume he did.

Q. Do you know whether he did or not?—A. Yes.

Q. You know he wrote you?—A. I think he did, yes; must have done it.

Q. I don't want any thinking; I want to know what you know.—A. Yes; I will say he wrote that the Red "C" Oil Company, prior to the date of that letter—I don't say in six months or six weeks or two years—but they were in the habit of raiding trade at Anderson, South Carolina, and sold carloads of oil.

Q. He wrote you that, did he?—A. Yes.

Q. Will you produce that letter?—A. I will produce it, yes; if necessary.

Q. You and Mr. Sanford and Mr. Stanley wrote a great many letters to Mr. Kercher, didn't you?—A. I can't recall any letters that I personally wrote to Kercher.

Q. You have no recollection of writing him personally?—A. Personally? I had very little to do with Mr. Kercher.

Q. Now, Mr. Kercher was a man you sent around all over your territory, didn't you?—A. Yes. I didn't send him.

Q. You sent him to buy out different concerns?—A. I don't recall any case except that case at Mobile.

Q. You sent him down to Mobile?—A. To see if Mrs. Jones

8471 would name a reasonable price on her property.

Q. Mrs. Jones was a widow, wasn't she?—A. Yes.

Q. Widow Jones?—A. Yes.

Q. She was selling oil for a living?—A. Yes.

Q. And supporting her family?—A. Yes.

Q. Her husband used to be a merchant there?—A. Yes.

Q. And she had a little plant there, hadn't she?—A. She had.

Q. And you tried to buy her out?—A. She wanted to sell out, she wanted to get out of the business.

Q. She never did sell out, did she, to you?—A. She did.

Q. When?—A. I can't recall.

Q. When did she sell out?—A. I can't recall.

Q. About when?—A. Well, two or three years ago.

Q. She didn't sell out for a long time after Kercher went there, did she?—A. She did not.

Q. You had agents at that town at that time, hadn't you?—A. Yes.

Q. And your agents had been talking to her, hadn't they?—A. I don't recall.

Q. They reported to you the fact, didn't they?—A. You should bear in mind that Mrs. Jones was buying her oil from us. It wasn't a trade or competitive proposition. There was no object in buying her out. We didn't want to buy her out, but she wanted to sell out.

Q. She was a merchant selling oil and buying it from you, wasn't she?—A. Yes.

8472 Q. And your agents advised her to sell out?—A. I don't know what our agents advised.

Q. Didn't they report to you that they did?—A. No, sir.

Q. You swear that they never reported to you that they advised her to sell out?—A. They never reported it to me.

Q. And you never heard of it?—A. I don't recall it.

Q. Isn't it a fact that you sent Kercher down there and he represented he was an independent merchant and was going to establish himself in business there?—A. If he did so he did it on his own authority.

Q. Didn't he say that she didn't want to sell out?—A. I never heard of such a thing.

Q. Didn't she break down and tell him that she had to have the business, that her husband had died, that she had a family to support, and had to have the business?—A. Oh, punk! I never heard of such stuff.

Q. You never?—A. No.

Q. You swear you never heard that?—A. Why, certainly.

Q. You were trying to drive that widow out of Mobile, weren't you?—A. Oh, that's all rot.

Q. We will see whether it is or not.—A. Well, you prove any such stuff as that.

Q. That is not true?—A. That is not true, sir; most emphatically.

Q. Kercher telegraphed you he couldn't buy her out, didn't he?—A. He couldn't at the price I told him. I said if she would sell for a reasonable price we would buy her out.

Q. She was making about $200 a month, wasn't she?—A. I don't know.

8473 Q. Didn't you want to buy it for $1,500?—A. We didn't want to buy it. She wanted to sell it.

Q. He reported to you by telegram he couldn't buy her out?—A. She asked us $5,000, and we thought she would be willing to sell it to some one else at a reasonable price. She wanted a big price from the Standard Oil Company.

Q. What did you pay her for it?—A. I don't remember.

Q. When did you buy it?—A. I don't remember that.

Q. How do you know you bought it?—A. I know we bought it, because I remember the proposition.

Q. Who bought it for you?—A. One of our agents down there.

Q. What is his name?—A. I suppose Captain Morris.

Q. Do you know?—A. Well, I think he did, yes. He had charge of the business down there.

Q. Give me his first name.—A. Captain T. S. Morris, of Mobile.

Q. When was it you sent Kercher down there?—A. I don't remember.

Q. You don't know when you sent him there?—A. No.

Q. I will see if I can refresh your memory.—A. You probably can. I can't remember dates of that kind. I know I sent him down there to see if he could get this woman to name a reasonable price for the property.

Q. That was in January, 1902, wasn't it?—A. I couldn't really tell you.

Q. I show you a telegram dated January 16, 1902, and ask you if you sent that telegram.—A. Why, yes; I sent that. That was 1902.

8474 (The telegram was marked Petitioner's Exhibit 858.)

Mr. KELLOGG. I will read this in evidence. I don't want to put the Western Union printed matter in.

"CINCINNATI, OHIO, *Jan. 16, 1902.*

"CHAS. KERCHER, *Mobile, Ala.*

"Use best efforts to purchase at fifteen hundred, but if absolutely necessary can go to sixteen fifty.

"C. T. COLLINGS."

Q. You sent that, did you?—A. I did.

Q. I thought you said it wasn't of any importance to you to buy it.—A. Well, that is quite a different investment, $1,650.

Q. I thought you said it wasn't of any importance to your company to buy it.—A. Oh, it wasn't.

Q. Why did you want him to use his best efforts to purchase it?—A. Because the property, the tankage, and the storage and the cans and other property she had around there was worth that, probably.

Q. And you wanted to buy it?—A. I didn't want to buy it at anything above those prices.

Q. Now, she had worked up quite a business, hadn't she?—A. We had an idea at that time that she had; I suppose we could easily have found out judging by the amount of oil we sold her. She bought practically all her oil from us.

Q. Why did you keep it a secret?—A. What?

Q. That Kercher was acting for you.—A. I don't know about his "acting." I told him to go down there, not with the object of misrepresenting himself, to get a price from her. I said, "We think she is asking us a fictitious price for that property. We know it is not worth over $1,500, what she has there. I have the feeling that

8475 she simply thinks she can force us to buy that property at a fictitious price, because she thinks that probably somebody else will come along there, the Gulf Refining Company, and she can threaten to sell it to them, or something of that sort.

Q. So you didn't want Kercher to make it known whom he was acting for?—A. I didn't say anything special about that. I said I wanted to know if she would name a reasonable price, a price such as she would name to other than the Standard Oil Company.

Q. And you sent Kercher down there?—A. Yes; to get the price.

Q. He was to act as an outsider?—A. He was not, certainly, told to tell he was going to buy it for the Standard Oil.

Q. And you didn't understand he was going to make that statement?—A. No, because we wanted to get a price from her which she would be willing to sell at to an outsider.

Q. Do you know Mr. Holmes's signature?—A. Yes.

Q. Is that his signature? [Handing witness paper.]—A. Yes, that is his signature.

Q. He is the treasurer of your company?—A. He is.

Q. And was at that time?—A. Yes. That is all right.

Mr. KELLOGG. I offer to read this letter in evidence. It reads as follows:

"CINCINNATI, *Jany. 10th, 02.*

"Mr. CHAS. KERCHER,

"# *508 Second Ave.,*

"*Macon, Ga., c/o Consumers Oil Co.*

"DEAR SIR: I regret not being in the office yesterday after-
8476 noon so as to complete arrangements with you for furnishing you funds at Mobile. However, I enclose herewith a letter of introduction to the City National Bank, authorizing you to make drafts on us as you may need the funds, the aggregate amounts of these drafts not to exceed $2,000. It is my understanding that this will give you all the money required. If not, advise me at once and I will furnish you further authority. We have not advised the bank people that you are working for anyone but yourself, so you may govern yourself accordingly in your talk with them.

"Yours, truly,

"JAS. HOLMES, *Treas.*"

Q. Any reason why he should not advise the bank that he was working for you?—A. As I told you, we wanted him to get the price on this property as a private individual, which she would name to Mr. Kercher personally, individually, on that property.

Q. And he was authorized to buy it, not in your name, but in his own? That is correct, is it?—A. That is right.

Q. Now, he went down there and represented to her that he was thinking of engaging in the oil business, didn't he?—A. I don't know what he represented to her.

Q. And in that way tried to force her to sell, didn't he?—A. I don't know anything about it, what he tried to do.

Q. How long after that was it before you succeeded in buying her out?—A. I just answered that question two or three times. I don't remember.

Q. That was six years ago?—A. So it was, according to that.

8477 Q. Now, she did business there for a while afterwards, didn't she?—A. Yes.

Q. Several years?—A. Married one or twice in the meanwhile.

Q. She must have been quite prosperous.—A. She was very busy.

Q. Did she marry twice?—A. I think twice.
Q. Was that reported to you? (No answer.)
Q. You keep track of the marriages down there, do you?—A. Well, there are some peculiar circumstances connected with this that made it very amusing, and that is the reason I remembered it.
Q. Do you remember a man by the name of Kinsella, at Cincinnati?—A. No, sir.
Q. Don't remember him?—A. Kinsella? No.
Q. You don't remember that he was quite a large peddler and you sold him your oil?—A. No, sir.
Q. You don't remember it?—A. I do not. Thank the Lord I didn't come in contact with the peddlers.
Q. You seem to have kept pretty close track of them.—A. No, not of the peddlers.
(An adjournment was here taken until the morning of Wednesday, September 9, 1908, at 10.30.)

8478 ROOM 715 CUSTOM-HOUSE, NEW YORK CITY,
Wednesday, September 9, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferries, at the above time and place.
Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison, Mr. J. Harwood Graves; on behalf of the defendant, Mr. Moritz Rosenthal, Mr. F. L. Crawford, Mr. Douglas Campbell, and Mr. W. Cleveland Runyon.

C. T. COLLINGS recalled, and his cross-examination resumed, as follows:

By Mr. KELLOGG:

Q. I show you Exhibit 784 in this case. Did you write that letter?—A. I think not, Mr. Kellogg.
Q. Do you remember the transaction?—A. I do not.
Q. You have no recollection of it?—A. No.
Q. Who did write it?—A. I think some one in the department that looked after that particular branch of the business.
Q. Whose handwriting was that attached to the letter?—A. I think that is one of the stenographers in my office.
Q. What is his name?—A. I think his name is probably Hobbs. He was the only one with the initial "H" that I recall.
Q. He had authority to sign your name, had he not?—A. He did not as a rule, except the letters that I dictated.
Q. Letters that you dictated he had authority to sign your name to?—A. He had.
Q. And he did that right along?—A. Yes.
8479 Q. And have you looked that letter over—you remember now that you did not dictate that letter some six years ago?—A. I say of course that on account of the character of the transaction it would hardly come to my notice.

Q. It would not?—A. No.

Q. Why?—A. Because it is not a merchandizing proposition.

Q. What is it?—A. It is a question of equipment, I should imagine, more than anything else.

Q. Buying out somebody—organization?—A. No, I don't think it would be that.

Q. Who is J. G. Thatcher?—A. I don't know. I never heard of him.

Q. You never heard of Mr. J. G. Thatcher?—A. No, sir; I do not know of any such—I can not recall any person of that name that was ever connected with the company in any way.

Q. Now you did not have anything to do with the sale or purchase of equipment?—A. If it was anything in a large way I would have, yes.

Q. But you would not have in a small way?—A. No, not in a small tranaction.

Q. Who would have?—A. The general manager's department. They had charge of all matters of equipment and organization.

Q. Then who would you say wrote that letter?—A. I think probably someone in the general manager's office.

Q. It emanated from the office of the Standard Oil of Kentucky?—A. There is no doubt of that.

8480 Q. Now, will you tell me any reason why there should be enclosed in that letter a letter written by a fictitious person by the name of J. G. Thatcher, directing the employment of a peddler?—A. I have no means of knowing whether it was enclosed.

Q. It says it encloses a letter, and it appears in testimony that this letter was enclosed?—A. Of course, I don't know anything about that.

Q. You don't know anything about it?—A. No.

Q. Didn't you have to do with the marketing?—A. Selling and pricing of goods.

Q. This has nothing to do with the purchase of equipment?—A. I don't know what it has. I have not seen the letter.

Q. Do you remember Mr. Hultz?—A. I have a sort of a recollection that there was a concern, two peddlers in Terre Haute, that had a business—I don't know whether it was a joint business or whether one of them had the business. They were peddlers and they had a title, the Home Oil Company, if I remember correctly.

Q. Hultz & Day, were they not?—A. I don't know whether they were a partnership or whether they were separate.

Q. You remember a man by the name of Day and a man by the name of Hultz? A. They were peddlers in Terre Haute.

Q. And they worked for your company?—A. They did.

Q. And sold oil under their own names?—A. I don't know about that.

Q. How did you happen to know about it anyhow?—A. Because in summing up, showing up particular transactions, our mar-

8481 keting, the amount of oil, for instance, sold by peddlers in

Terre Haute, that would come to me; that is, I mean, the monthly or quarterly statements as to the gallonage, the volume of business we were doing.

Q. You knew Hultz & Day, then, were peddling for your concern in Terre Haute?—A. They were selling oil of that company; selling our oil.

Q. That came under your department, did it not?—A. That was purely a question of examining as to the output of oil.

Q. Did your men under you have authority to make any arrangements with anybody they saw fit, to do the peddling?—A. The general manager would have that authority.

Q. The general manager?—A. Yes, sir.

Q. And he made this arrangement, did he?—A. It was made in his department.

Q. You did not make it?—A. If it was made, it was made in the general manager's department.

Q. You know it was made, don't you?—A. I take it from that letter, that that letter undoubtedly came from my office, and there is every indication there that they did employ Hultz & Day. In fact, as I said, I have seen reports showing what the business of Hultz & Day was, along with our business.

Q. This letter is dated July 30, 1902?—A. Yes.

[Mr. Kellogg handed the letter to the witness.]

Q. Dated the same day, and enclosed in it, is a letter from J. G. Thatcher to Charles Kercher, dated at Columbus, about employing Hultz & Day. [Handing letter to witness.]—A. I have never seen that.

8482 Q. You never have seen it?—A. No. I don't know a thing about this.

Q. You do not?—A. This Thatcher proposition; no, sir; I never heard of Mr. Thatcher.

Q. Don't know such a man, do you?—A. No.

Q. Do you know of any reason why Mr. J. G. Thatcher, of Columbus, should write to Charles Kercher to employ Hultz & Day for you?—A. I do not know that he did.

Q. Well, it appears in evidence that he did.—A. Well, but then I am not testifying as to things that are in evidence that I do not know about.

Q. You do not know anything about this?—A. No; I do not.

Q. Then, you can not deny that this was done?—A. I can not.

Q. And it appears to have been done over your signature, from your office?—A. That may be.

Mr. CAMPBELL. Is the Thatcher letter enclosed in the letter of Mr. Collings?

Mr. KELLOGG. The Thatcher letter is enclosed in a letter by Mr. Collings to Mr. Kercher, and it appears that the Thatcher letter is bogus, in order to keep secret the employment of Hultz & Day.

Q. Now, did Hultz & Day advertise, when they went around, that they were peddling for the Standard Oil?—A. I could not say as to that, Mr. Kellogg; I don't know.

Q. Did you understand that they did, or did not?—A. No; I did not understand anything about it.

Q. You understood they were peddling in their own names?—A. The way I knew about that, was, as I say, by seeing
8483 monthly statements of the gallonage of Terre Haute, and how it was distributed—who sold the oil. I may have noticed from time to time that they showed up with a certain amount of business there. That is the only way I would know anything about them.

Q. You spoke yesterday in your testimony about employing a peddling outfit at Vincennes?—A. I do not recall it.

Q. In your direct examination. What was the name of that?—A. I do not recall it.

Q. I will have to turn to your testimony. I do not remember.—A. I do not recall it.

Q. In reply to Mr. Rosenthal you spoke about the employment of a peddling outfit at Vincennes, Ind.

Mr. CAMPBELL. I think he testified that he sent an outfit there.

Q. Well, sent an outfit there. Who was it you sent there?—A. I do not recall. I would not know about that.

Q. Who was your agent there?—A. At Vincennes?

Q. Yes.—A. I don't know.

Q. Robert Gunton?—A. No; he was at Evansville.

Q. Oh, he was at Evansville? Well, perhaps it was Evansville.—A. I can not recall the Vincennes man. We had an agent there, I know, but I can't recall what his name was; it is too long time ago.

Q. Mr. Robert Gunton had charge at Evansville?—A. Yes; that is correct.

Q. Did he not also have charge at Vincennes?—A. That was a substation that he had charge of.

8484 Q. That explains it, then.—A. Yes; that is correct.

Q. What was the peddling outfit that you sent there?—A. I do not recall it; I don't know what name it was under or what it was called.

Q. Barnhart or Barnhard?—A. Well, as I say, I can not recall it. It was a very small incident, evidently.

Q. You wrote to Mr. Gunton about it, did you?—A. I do not remember.

Q. What?—A. I say I do not recall.

Q. What was it you testified about sending a peddling outfit to Vincennes?—A. I don't recall the exact words, but my recollection is that I stated that there was a competitor there—a business operated by a man by the name of Buck, if I remember correctly. He operated under the title of the Merchants' Oil Company, if I recall it rightly, and he was running a peddling wagon, as well as a wholesale wagon to the trade; and, as nearly as I can recall it, Mr. Gunton complained that he was losing quite a good deal of business through his tank wagons, and it was due to Mr. Buck's peddling wagon; that he wanted to put on a similar outfit and sell to consumers in the same

way that Buck sold. That is about my recollection of the whole thing.

Q. You wrote a letter to Mr. Kercher and to Mr. Gunton about it, didn't you? [Handing witness paper.]—A. I doubt very much if I wrote that letter. I may have written to Gunton, but I doubt if I wrote that.

Q. Well, who did write it?—A. The general manager's of-
8485 fice. That is a part of their business, looking after that kind of thing.

Q. I show you Exhibit 800. Is that the letter you wrote to Mr. Gunton?—A. From the fact that it was written to the special agent at Evansville, it would indicate that if it was written from my office it would have been written by me, because it is written to a special agent, not to a subordinate.

Q. You think you wrote that, do you?—A. I think it is possible I did write it. As I say, if I could see the original I could tell, but——

Q. Your recollection is that you wrote him about it?—A. No; I do not say that I recall it. I say from the fact that it was written to a special agent it would indicate that I wrote it, because most of the correspondence with the special agents was handled by me; but about Kercher, that would have to——

Q. This special agent, Robert Gunton, was your manager, was he not?—A. He was.

Q. And you say in this letter of July 3: "Please note enclosed letter, or copy of letter I am writing our manager at Evansville in regard to starting a peddling outfit at Vincennes, Indiana."—A. Yes.

Q. "Please arrange to meet him"?—A. Yes.

Q. Now, you think you wrote that, too, don't you?—A. No; I do not.

Q. You do not, but you did write the other?—A. It is quite possible, if I did write that letter to Gunton, I would have turned the copy over to the general manager, and he would have followed
8486 it up probably in the way that that letter would indicate.

Q. Now, in this letter that you say you wrote to Mr. Gunton, you state: "My suggestion would be that you arrange to meet him at Vincennes. You will, of course, have to have this meeting in a way that no one will see you together." Why was that?—A. Well, that is possible. It was not the custom, in handling these peddling outfits, to advertise that we were going into the peddling business, for the reason that we did not want to lose our regular tank wagon customers.

Q. Then your direction that your agent should not be seen with this peddler was to keep it secret that the peddler was going into business there?—A. We did not want to lose our tank wagon customers—antagonize them by selling to consumers.

Q. Then, it was your desire, where you started peddlers in towns like Vincenens and other places, to keep the fact that they were peddling for the Standard Oil secret?—A. That is correct.

Q. And that was customary all over your territory?—A. Yes. That was customary with our competitors also.

Q. Now, name a competitor of yours who had a tank wagon or a peddler whom he kept secret.—A. The Terre Haute Oil Company.

Q. The Terre Haute Oil Company?—A. Yes.

Q. What peddler did they have that they kept secret?—A. They operated the Terre Haute Oil Company under their—no, they operated O'Connell & Shea under the title of O'Connell & Shea, and sold to merchants, and they operated a peddler under the name of the Terre Haute Oil Company.

8487 Q. O'Connell & Shea were merchants of Terre Haute, were they not?—A. They were in the oil business the same as we were.

Q. They were merchants there, were they not?—A. Yes.

Q. Wholesalers?—A. Yes.

Q. At Terre Haute, were they not?—A. Yes.

Q. And owned the Terre Haute Oil Company?—A. They did.

Q. And advertised it to everybody, didn't they, and everybody knew to whom it belonged?—A. No, sir; I do not think so.

Q. Do you know that they did not?—A. No; I never was in Terre Haute, but I have always heard that——

Q. Do you swear that they did not advertise the Terre Haute Oil Company as their concern?—A. I can not, because I was not there to personally look into the thing.

Q. Then you do not know of your own knowledge of one single wholesaler, competitor of yours, who kept secret one of their peddlers, do you?—A. Of my own knowledge I do not, but I have heard of many cases.

Mr. CAMPBELL. How about the National Oil Company?

WITNESS. Well, it is a case just similar to this Terre Haute case. All I would know, of course, was what my people in the field reported to me. I personally did not go on the ground and investigate it and verify their statements.

Q. Do you know Mr. G. A. Stein?—A. G. A. Stein—what?

Q. Assistant treasurer of the Standard Oil Company.—A. Of course I know Mr. Stein. I do not think those are his initials.

Q. What are his initials?—A. I can not recall them.

Q. You know Mr. Stein, do you?—A. I know that Mr. Stein
8488 was at one time assistant treasurer of the Standard Oil Company of Kentucky.

Q. At what time?—A. I should say about 1901, '2 or '3, somewhere along there. He has not been with the company for several years, four or five years.

Q. Where is Mr. Stein now?—A. I have heard that he was abroad, in Germany.

Q. He is in the employ of the Anglo-American Oil Company, isn't he?—A. I don't know.

Q. You don't know anything about it?—A. Not of my personal knowledge, I could not say.

Q. Now, do you know a man by the name of Niets in Cincinnati?—A. I do not.

Q. You never heard of that name?—A. No.

Q. Did you operate a peddling concern under the name of Niets?—A. Not that I know of.

Q. You never hear of it?—A. No; I never handled that part of the business.

Q. You have just stated that you made arrangements with peddlers?—A. I did not.

Q. That you knew about them—you handled their accounts.—A. No; I did not say that.

Q. Well, what do you know about them?—A. I would know about the volume of business that any peddler, any concern we were operating under——

Q. You have charge of the marketing of all oil, haven't you?—A. Yes.

Q. That oil marketed by peddlers, as well as by everybody
8489 else, haven't you?—A. Yes.

Q. Then, it is your business to know who is peddling for you, isn't it?—A. All I would know is when I would see the monthly reports of all sales.

Q. Is it your business to know who is peddling for you?—A. Yes.

Q. And to know what they are selling oil at?—A. Yes, I would know about that.

Q. And to know whether they are selling in their own names, or in the name of the Standard Oil?—A. Yes; I would know that.

Q. That is what I thought. Now did you know a man by the name of Niets?—A. No; I did not.

Q. Do you know that Stein was peddling for you under an assumed name?—A. I don't think there was ever a peddler under that name. Where was he operating?

Q. Do you know of Mr. Stein corresponding with various peddlers under the name of Niets?—A. No; I do not.

Q. And correspondence coming in to him, to the Cincinnati office, under the name of Niets?—A. No, sir; I would not know anything about that. It wouldn't come to me and I wouldn't——

Q. You say Mr. Kimball was assistant treasurer?—A. Yes; he was at one time.

Q. How does your mail come to Cincinnati or to Covington—direct to you as manager of the Standard Oil Company?—A. All the mail that is intended for me comes to me. That intended for the treasurer's department is addressed to Mr. Holmes.

Q. How is it delivered to you?—A. Delivered to me in separate envelopes.

8490 Q. I know, but how is it delivered at the general office?—A. It is brought in by messenger.

Q. Brought in by the Government mail deliverer?—A. No, sir.

Q. Where from?—A. From the post-office.

Q. From the post-office?—A. Yes.

Q. In one large bag?—A. Yes.

Q. And distributed in your office?—A. It is distributed by the man who brings it. He takes the different departments each one their mail.

Q. Your mail does not go to a secret box, does it, in the post-office?—A. We have no secret boxes that I know of.

Q. Does your mail go to a box number in the post-office?—A. I don't know about that.

Q. Do you know whether it does or not?—A. I do not.

Q. Does it come to you directed in the name of the box?—A. I don't know about that. I never look at any of the envelopes.

Q. Haven't you looked at your mail to see how it comes to you?—A. My mail is all opened before it comes to me, before I get to the office.

Q. You never have seen any of the envelopes addressed to you?—A. If they were marked "Personal" I would; yes.

Q. How would they come?—A. Care of the Standard Oil Company, Covington, Kentucky.

Q. No name of a box on it?—A. I never saw one that I can recall.

8491 Q. You never saw on any of your mail, did you, the number of a Government box in the post-office; did you?—A. I might have done so, but I would not have given it a minute's or a second's thought.

Q. Does your mail generally come to you addressed with the number of a Government box on it?—A. I could not say. I do not see the mail once a month.

Q. You do not know whether it does or not?—A. No; I do not.

Q. Don't you know you have not got a box in the post-office?—A. I could not say about that, really, not if you pin me down.

Q. Don't you know that to get a box in the post-office you have to make a personal application?—A. Me, myself?

Q. Yes.—A. I don't know about that. I suppose that is a fact. I never had one there.

Q. Have you got a box in the post-office?—A. Personally?

Q. Yes.—A. No; I have not.

Q. Very well. Now, you said Mr. Kimball had a box in the post-office, did you?—A. I suppose that is the treasurer's—the company's box.

Q. Do you know that the treasurer has got any box in the post-office?—A. I do not.

Q. Well, then, what did you mean when you said——A. I don't know what period you are referring to—when we were in Cincinnati we might have had one kind of a box, because the post-office is quite a distance from our old office in Cincinnati.

Q. What did you mean when you said that Mr. Kimball had a box number in the post-office?—A. I don't know that I said it.

Q. You don't know that you said it?—A. No; I say I do not know that I said it.

Q. Do you swear you didn't say it?—A. No; I do not.

8492 Q. Did he have such a post-office box?—A. I suppose the treasurer had.

Q. Do you know that he had?—A. No; I would not say positively that he had, because——

Q. Do you know anything about it?—A. No; I could not say positively one way or the other about whether the treasurer had a box in the post-office or not. I never receive or look at the mail, and never thought about it.

Q. Then what do you mean by saying that your special agents, when they addressed letters to Mr. Kimball, sent them to his post-office box?—A. I never said that, I don't think. I wish you would look and see whether I said any such thing.

Q. You never said anything about it?—A. I do not recall it. That would be a minor matter that I would not attach any importance to, and it did not impress itself upon me.

Q. Now, does your treasurer or assistant treasurer, or any of your officials in the general offices, get their mail through private boxes, numbered, in the post-office at Covington, Ky?—A. I think not. I would not say positively.

Q. Did they ever get such mail in Cincinnati?—A. It is possible. I don't know.

Q. You don't know?—A. I could not testify positively on that head, because I don't know. It is a detail I never looked into, never thought of.

Q. Did you ever hear of Mr. Stein getting correspondence at your office under the name of Niets?—A. No; I do not recall anything of that sort.

Q. Never heard of it?—A. No; I saw it in the newspapers somewhere, if I remember rightly, in some investigation,
8493 that it was alleged that he received mail that way, but that is about all I recall of it.

Q. Did you ever know of his using the name in any way?—A. No.

Q. Never heard of it?—A. I never heard of it. I do not recall any such thing.

Q. Who was Mr. W. C. Elliott?—A. Mr. Elliott was a stenographer, originally in Mr. McDonald's office. When I went to Cincinnati I inherited him. He was with me for about two or three years after I went up to Cincinnati.

Q. During what years?—A. I think that was probably 1898, 1899, and 1900.

Q. What years did you say?—A. 1898, 1899, and 1900, I think.

Q. He was your stenographer?—A. He was, for two or three years, probably.

Q. What other duties did he have to perform?—A. That was all he ever performed for me.

Q. No other duties at all?—A. No.

Q. He would not receive any mail from your special agents, intended for you?—A. He ought not.

Q. He ought not?—A. No, sir.

Q. Then, if any mail came to Mr. Elliott about the Standard Oil business, at Covington or Cincinnati—that was at Cincinnati, was it not?—A. Yes.

Q. It ought to have been turned over to you, ought it not?—A. Yes; if it was addressed to me it ought to be.

Q. If it pertained to the business of the Standard Oil, it should have gone to you, should it not?—A. It would depend upon what part of the business, what department.

8494 Q. Or have gone to some of the officials at Cincinnati?—A. Yes; to some of the officials at Cincinnati.

Q. He had no business to receive mail about the business, personally?—A. He ought not to have received it. He was not an official. Therefore, he was not qualified to——

Q. Now, if a large number of letters were addressed to him, what was done with them?—A. I don't know.

Q. You don't know anything about it?—A. No.

Q. Where is Mr. Elliott now?—A. He is dead.

Q. He is dead?—A. He has been dead, I should say, some eight years probably.

Q. Are all the stenographers who worked for you dead?—A. Well, you can verify how many. If I have mentioned any as being dead, you can bet they are dead all right.

Q. I believe you said Mr. Hobbs was dead?—A. No; I did not.

Q. Where is Mr. Hobbs?—A. Mr. Hobbs is somewhere in Kentucky, I think.

Q. Who was it who worked for you, that you said was dead?—A. Frank Barline.

Q. Frank Barline—he was a stenographer?—A. Yes.

Q. Who was Mr. M. Maxon?—A. He was a special agent of the Standard Oil Company at one time in Decatur, Illinois.

Q. You knew him personally?—A. Oh, yes.

Q. Had a good deal of business with him?—A. Yes.

Q. A large amount of correspondence with him?—A. Yes; quite a good deal.

8495 Q. Do you know his signature and handwriting?—A. I think I would, yes.

Q. Where was he during 1898, 1899, and 1900?—A. I think he was located at Decatur, at that time.

Q. At that time he was your general agent there?—A. I think he was.

Q. How much territory did he have?—A. Well, he had quite a good deal of Illinois.

Q. All of the southern part of Illinois?—A. Pretty nearly all of it, I guess.

Q. East St. Louis?—A. Yes, he had East St. Louis. That was under the charge of——

Q. What was his business, what was his duty?—A. He exercised general supervision, looked after the salesmen, the working of the

business. He was the special agent; he was the head man of that department.

Q. Now, I believe you testified that you never paid out money to obtain information as to competitive shipments?—A. I did.

Q. Nor authorized such a thing?—A. Correct.

Q. And your company never did?—A. Not that I ever knew of.

Q. Well, you would know of it if it was done, wouldn't you?—A. I certainly ought to know it.

Q. It was your duty to know it?—A. I certainly ought to know it.

Q. And that never was done in your territory?—A. Not that I ever knew of.

Q. And if it was done and paid for by the Standard Oil of Kentucky, you would know it?—A. The treasurer's depart-
8496 ment should have furnished me with a memorandum of the performance of such an act.

Q. If Mr. Elliott did such a thing, he should have furnished you with a statement of it?—A. He certainly should, sir.

Q. If any such correspondence took place with Mr. E. B. Stanley, it was your duty to know about these payments, was it not?—A. I would know about them through the treasurer's department. Mr. Stanley's department might have failed to mention it, if they saw it, but Mr. Holmes' (the treasurer) department would not have passed that, I believe.

Mr. ROSENTHAL. Do you mean you should or you would have known it?

WITNESS. I should have known it.

Q. I show you a letter, signed by M. Maxon—is that his signature?—A. Yes, that is his signature.

Q. Addressed to E. B. Stanley?—A. Yes.

Q. He was your general manager?—A. He was.

Q. At that time?—A. Yes.

Q. What is the date of that letter?—A. That is the 22nd of January, 1900.

Mr. ROSENTHAL. Let me see the letter.

(Letter handed to Mr. Rosenthal.)

Q. I want to show you some more. That is his signature, is it?—A. Yes, that is Maxon's signature.

Mr. ROSENTHAL. Is this a letter, or a copy of a letter?

Mr. KELLOGG. It is a letter-press copy.

Q. At the top and at the bottom, those are both signatures of Mr. Maxon, are they? [Handing papers to witness.]—A. Yes.

(Paper marked Petitioner's Exhibit 859.)

8497 Mr. KELLOGG. I offer this Exhibit 859 in evidence.

Another paper marked Petitioner's Exhibit 860.

Q. I show you a letter dated May 28, 1898, signed by Mr. Maxon. Is that his signature?—A. Yes.

Mr. KELLOGG. I offer petitioner's Exhibit 860 in evidence.

Q. I will read it so it will be in the record at this place.

"Personal." Headed "Expenses."

"MAY 28TH, 1898.

"Mr. W. C. ELLIOTT, *Cincinnati.*

"DEAR SIR: Referring to conversation with you yesterday at St. Louis in regard to expenses for information, I wish you would please send me check for $21.40 as promptly as you can. $7.00 of this amount is what I have written you about in the past. $4.40 is for information about the shipments of Mr. T. D. Wilson, at Litchfield, and $10.00 is for information up to date at E. St. Louis.

"Yours, truly, M. MAXON, *Manager.*"

Did you know about that?

Mr. ROSENTHAL. Now, do you propose to connect that with a letter written by the Standard Oil Company to Maxon?

Mr. KELLOGG. Mr. Elliott was this man's——

Mr. ROSENTHAL. Oh, I know; but do you propose to follow that up by showing that that request was complied with?

Mr. KELLOGG. I propose to cross-examine this man.

Mr. ROSENTHAL. Oh, no; I merely ask that for the purpose of determining whether I wish to object to this exhibit or not, that is all.

Mr. KELLOGG. Well, you enter your objection. You will find out what I propose to do.

8498 Mr. ROSENTHAL. Now, unless you propose to follow that up by showing that the Standard Oil Company or some of its representatives acted upon that letter and paid Maxon that money, I object to it upon the ground that it is not properly connected, and that it is entirely immaterial.

Mr. KELLOGG. Now, what was my question?

Mr. ROSENTHAL. There is not any question. You simply read that for the press, that is all, that exhibit.

Mr. KELLOGG. I read it to have it in the record at this place, with the testimony of Mr. Collings.

Mr. ROSENTHAL. Then what is the use of duplicating your exhibits, having them as exhibits, and also having them in the record?

Mr. KELLOGG. Because I want the signature of this man to appear in the record admitted, that is why.

Mr. ROSENTHAL. Well, that is not very clear to me, Mr. Kellogg.

Mr. KELLOGG. I have no doubt it is not. It will be clearer before I get through, I think.

Mr. ROSENTHAL. I trust so.

Q. Now, Mr. Collings, did you see that letter?—A. What is the date of it?

Q. May 28, 1898.—A. I did not, sir. Do you want me to tell you why?

Q. Yes.—A. I did not go to Cincinnati until October, 1898.

Q. You did not?—A. I did not, and I was not actively in charge in the business until 1900.

Q. You went there in October, 1898?—A. Yes, sir.

8499 Mr. ROSENTHAL. Well, I shall have to object to it then, upon the further ground that it does not tend to impeach any statement that the witness has made, and it is not proper cross-examination.

Q. Mr. Elliott, you say, was there before you were?—A. Yes, sir.

Q. And he was in what position?—A. He was a stenographer.

Q. For whom?—A. At that time, I presume, Mr. McDonald, who was the president of the company at that time.

Q. Mr. McDonald had charge of the marketing, preceding you, did he?—A. He was the president of the company.

Q. All right, I will take another one. You were there in February, 1899, were you?—A. Yes; but I was only a general manager of the southern division.

Q. You had nothing to do with the business of marketing in Illinois in January, 1899?—A. No, sir; Mr. Ritchie was the general manager of the northern division.

Q. When did you take charge of the Illinois division?—A. In 1900, I think, when I was elected second vice-president.

Q. What time in 1900?—A. I think possibly in January.

Q. January, 1900?—A. Yes.

Q. All right. Then you were there in February, 1900?—A. Yes.

Q. In charge?—A. Yes.

Q. And Mr. Elliott was your stenographer?—A. He was.

(Paper marked Petitioner's Exhibit 861 at the top and Petitioner's Exhibit 862 at the bottom.)

Q. I show you petitioner's Exhibit 862. Was that letter written by Mr. Maxon? Is that his handwriting?—A. Yes; that

8500 is Maxon's handwriting.

Q. That is addressed to Mr. W. C. Elliott, is it?—A. Yes.

Q. Did you receive that letter?—A. I did not.

Q. I show you Exhibit 861. Is that Mr. Maxon's handwriting?—A. Yes.

Q. That is addressed to whom?—A. James Holmes.

Q. The treasurer?—A. Yes.

Mr. KELLOGG. I offer petitioner's Exhibits 861 and 862 in evidence. Petitioner's Exhibit 862 reads as follows.

Mr. ROSENTHAL. The same objection is made to this that was made to the last exhibit.

Mr. KELLOGG. Yes. That objection may pertain to all letters of this class without repeating it. (Reading.) "Mr. W. C. Elliott, Cincinnati, Ohio. Dear Sir: I wish you would please send me by return mail draft for $14.00 for information in reference to receipts and shipments by T. D. Wilson at Jacksonville, Illinois. Yours, truly, M. Maxon."

Q. You never heard of that letter?—A. I did not, sir.

Q. Did you send him the draft?—A. I did not.

Q. Why would Mr. Maxon be writing to Mr. Elliott for drafts for information received?—A. That is more than I can tell you, sir.

Q. You do not know anything about it?—A. I do not, sir.

Q. Mr. Elliott was your stenographer at that time?—A. Well, if he did anything of that sort he did it without my knowledge or consent.

Q. He did?—A. He did.

8501 Q. Do you think he would be sending $14.00 to Mr. Maxon without your knowledge or consent?

Mr. ROSENTHAL. Wait a minute. I object to that, because it assumes that it was sent. There is not any proof in this record that it was.

Q. Please answer the question.—A. What is that?

Mr. KELLOGG. Read the question.

The pending question was read by the stenographer, as follows: "Do you think he would be sending $14.00 to Mr. Maxon without your knowledge or consent?"—A. I can not say as to what he would do. I do not know.

Q. Do you think he would take that out of his own pocket?—A. Well——

Mr. ROSENTHAL. I object.

A I don't know.

Q. How much salary was he getting?—A. I could not tell you that.

Q. About how much?—A. I don't know.

Q. What did you pay your stenographers?—A. Elliott was a special kind of a stenographer that was handed down. He was Mr. McDonald's secretary at one time. I suppose he got somewhere between $100 and possibly $150; I don't know.

Q. Was he your secretary also?—A. No, sir; he was not.

Q. Simply your stenographer?—A. That is all. I did not have——

Q. In your office during all these years?—A. He was there at that time.

Q. Three years?—A. He was there about 1900.

Q. Now, Maxon was one of your agents?—A. He was.

8502 Q. And for several years afterward——A. Yes.

Q. Remained your agent?—A. Yes.

Mr. KELLOGG. Now, the other exhibit (petitioner's Exhibit 861) reads as follows: "Feb. 22, 1900. Mr. James Holmes, Treas., Cincinnati." Headed "Pass."

"DEAR SIR: Your letter of the 21st enclosing Wabash pass for Mr. H. R. Harries is received this morning and noted. This will be a revenue earner.

"Yours, truly, M. MAXON, *Manager*."

Q. Did you ever see that letter?—A. No.

Q. Did you have to do with sending out the passes?—A. No; that was the treasurer's business.

Q. That was the treasurer's business?—A. If we had any passes, they went through his hands.

Q. Who was Mr. H. R. Harries?—A. My recollection is he was an assistant to Mr. Maxon.

Q. Assistant to Maxon?—A. Assistant to the special agent; yes.

Q. Did Mr. Maxon and Mr. Harries have railroad passes?—A. I suppose they did, from that.

Q. Well, do you know whether they did or not?—A. I don't know.

Q. What was your understanding of it?—A. There was a certain time there when some of those men did have passes, I know that.

Q. Was not that customary throughout your territory?—A. No; I don't think you could say it was customary.

Q. Did your other agents, any of them, have passes?—A. There were certain ones who, if I remember rightly, were furnished, as agents of the Union Tank Line Company.

8503 Q. What did Mr. Maxon have to do with the Union Tank Line Company?—A. I could not tell you.

Q. He was under you, was he not?—A. He was.

Q. Did he have anything to do with it?—A. He might have looked after some business for them, outside.

Q. To get a pass?—A. Well, probably.

Q. Probably, yes, I have no doubt. What did Mr. Harries have to do with the Union Tank Line Company?—A. About the same thing as Maxon.

Q. Just for the sake of getting a pass?—A. I could not say about that.

Q. What other agents did you have who were traveling agents, or agents in the sales department, who had passes?—A. It would be very difficult to recall.

Q. You had a good many of them that had them, hadn't you?—A. Probably had others, I could not tell you.

Q. All over your territory?—A. It is too long ago, I could not recall it.

Q. You do not remember. Isn't it a fact that your sales agents generally have passes from railroads?—A. No; I would not say that—not generally.

Q. Well, a good many of them did, did they not?—A. There were a number of them; yes.

Q. Men who traveled a good deal?—A. Yes.

Q. You know they had no right to them, don't you?—A. I never investigated that feature of the case.

Q. Was this a revenue earner—this pass?

Mr. ROSENTHAL. You know they had a perfect right to them.

8504 Q. Do they get them now?—A. They do not.

Mr. ROSENTHAL. Now is not 1900. We have a different law now than we had in 1900.

Mr. KELLOGG. The law was exactly the same so far as passes were concerned.

Mr. ROSENTHAL. Not at all.

Mr. KELLOGG. Exactly the same.

Mr. ROSENTHAL. You would hardly make that statement, Mr. Kellogg.

Mr. KELLOGG. So far as issuing passes to persons who were not railroad employees.

Mr. ROSENTHAL. Not at all. There was not any law prior to 1900 prohibiting the issuing of passes to any human being.

(Paper marked Petitioner's Exhibit 863.)

Q. I show you a letter, Exhibit 863, signed M. Maxon, manager. Is that his signature? Just hold it down close and you can see.—A. That is very indistinct.

Q. Well, what is your opinion about it?

Mr. ROSENTHAL. I object to his opinion.

Mr. KELLOGG. That is what he is there for.

Mr. ROSENTHAL. Not at all. He is there to testify to facts.

A. No, sir; I can not see clearly enough on that. It is too indistinct—just looks like a blur to me.

Q. It is "M. Maxon," perfectly distinct, if you will look at it.—A. Yes, of course, if you want to make it that way.

Q. It looks like his signature, doesn't it?—A. In a general way there is a kind of a resemblance there to his signature, but I
8505 would not identify that as his signature. It is too indistinct.

Mr. KELLOGG. I offer this letter in evidence. (Petitioner's Exhibit 863.)

Mr. ROSENTHAL. I object to it on the ground that there is no identification of it.

Mr. KELLOGG. The letter reads as follows:

"Mr. W. C. ELLIOTT, *Cincinnati.*

"DEAR SIR: I have just received and noted your letter of the 8th in reference to the above subject at Decatur and Springfield. Our people at Springfield are unable to get information that is authentic on all shipments that the competitors make out from that point. They——"

Mr. ROSENTHAL. What is the date of that letter?

Mr. KELLOGG. November 9, 1899.

Mr. ROSENTHAL. I object to it on the further ground that it is prior to Mr. Collings' employment, and has not any relation to any proper subject-matter of cross-examination of this witness.

Mr. KELLOGG. "They report to me quite a number of shipments, but it is just what they can see at the depots.

"Now, in reference to Decatur, I wish to frankly admit that I cannot make arrangements here to get this information. It might be that you could come in here and do so, being an entire stranger. There has been quite a number of changes in the railroad people in the freight houses in this city and there are a great many more on the anxious seat.

"Yours, truly, M. MAXON, *Manager.*"

Mr. ROSENTHAL. That is offered as an exhibit, isn't it?

Mr. KELLOGG. Yes; for the purpose of identifying the signature. I want these letters that I read to be in Mr. Collings' testimony.

8506 (Papers marked Petitioner's Exhibits 864 to 897, inclusive.)

Q. I show you petitioner's Exhibits 864 and 865. Are those Mr. Maxon's signatures to those letters?

Mr. ROSENTHAL. You mean those letter-press copies?

Mr. KELLOGG. Yes; those letter-press copies.

A. Yes, sir.

Mr. KELLOGG. I offer Petitioner's Exhibits 864 and 865 in evidence.

Mr. ROSENTHAL. I object to Exhibit 865 on the ground that it is res inter alios. I object to the other for the same reasons as heretofore stated.

Q. Who was L. H. James, agent East St. Louis, Ill?—A. I don't recall him. What is the date of that letter?

Q. 1898.—A. I wouldn't know about that.

Q. Wasn't he agent there in 1900?—A. I don't know.

Q. 1901 and 1902?—A. No; I couldn't say; I don't know.

Q. Who is your agent there now?—A. I have no dealings with East St. Louis now.

Q. That is under the Waters-Pierce?—A. I don't know.

Q. You don't know?—A. No.

Q. You withdrew from there?—A. Sold that business.

Q. To whom?—A. To the Standard Oil Company of Indiana.

Q. Who was your agent the last time you had anything to do with that town?—A. I can't recall; that is a substation; I wouldn't follow that very closely.

Q. Never heard Mr. James' name?—A. I don't recall.

Q. Never knew the man?—A. No.

8507 Q. Never had any correspondence with him?—A. Never.

Q. Will you look at Petitioner's Exhibit 868? Whose signature is that attached to that letter?—A. That is Maxon's.

Mr. ROSENTHAL. Just let me ask a question. Did you ever see Maxon sign his name?

WITNESS. I don't recall that I ever saw him sign his name.

Mr. ROSENTHAL. You mean, when you say that is Maxon's signature, that the signature there is M. Maxon, or that you know that he wrote it—which one?

WITNESS. I mean that I have seen his signature a number of times, many times, addressed to me; that is, letters coming from him to me. The signature in that letter is practically the identical signature as the signature on the letters I received from his office. I don't recall that I ever saw him sign a letter.

Q. Did you ever see him sign any contracts?—A. No.

Q. Any statements of any kind?—A. No, I don't remember of ever seeing him sign.

Q. You never have?—A. He was not in my office.

Q. But you had a large amount of business with him?—A. Yes.

Q. A large amount of correspondence with him?—A. Yes.

Q. Received letters from him very often?—A. Yes.

Q. And answered the letters?—A. Yes.

Q. And the authenticity of the letters he wrote you was never questioned, was it?—A. It was not.

Q. What?—A. No.

Q. You believe that to be Mr. Maxon's signature, don't you?—A. Yes.

8508 Q. Please look at Petitioner's Exhibits 866 and 867.—A. Yes, they are the same signature.

Q. The same signature, Mr. Maxon's?

Mr. ROSENTHAL. I understand the same objection may apply to all these exhibits without repeating it?

Mr. KELLOGG. Yes, you need not repeat your objections.

Q. Petitioner's Exhibits 869 and 870? [Handing papers to witness.]

Mr. ROSENTHAL. I want to make a further objection; that this objection is to all of these alleged letters. These on their face appear to be tissue-paper copies of letters. They are not addressed to this witness and not addressed to the Standard Oil Company. There is no proof in this record that any letters of which these exhibits purport to be copies were ever actually sent; non constat, Maxon, for purposes of his own, may have made letter-press copies of certain alleged letters which were never thereafter sent. In the absence of some proof that the letters were actually sent, in the absence of the testimony of Mr. Maxon, whom the Government does not seem to desire to call in this case, there is no proper connection made which would make these letter-press copies competent evidence.

Mr. KELLOGG. You want that objection to each letter, do you?

Mr. ROSENTHAL. Yes, sir, to each alleged letter-press copy of an alleged letter.

Mr. KELLOGG. Yes; be sure and get that in.

Mr. ROSENTHAL. Yes; I apprehend the stenographer will get in everything I say.

8509 Mr. KELLOGG. Well, I wanted to caution you, that is all.

Mr. ROSENTHAL. I'm much obliged to you for your caution.

WITNESS What is it you want to know about this, Mr. Kellogg.

Q. I want to know if Mr. Maxon's signature——A. That signature is impossible to make out. It is so faint it is really hard to say, but it does look like his signature.

Q. You refer to Exhibit 870?—A. Yes.

Q. 870 you think is his signature, and 869 is too dim to tell?—A. Yes. I couldn't tell you about Exhibit 869; I don't think you can read it.

Mr. ROSENTHAL. Why don't you bring on Maxon? I have been curious——

Mr. KELLOGG. Your curiosity will be gratified.

Mr. ROSENTHAL. We have waited six months.

Mr. KELLOGG. You know you stipulated that Mr. Maxon's testimony, which was taken before the Interstate Commerce Commission, should be incorporated into this record, and it is in this record.

Mr. ROSENTHAL. Notwithstanding that, you notified us that you were going to call him and you didn't.

Mr. KELLOGG. Well, we are going to call him.

Mr. ROSENTHAL. I hope you will. We can wait for months.

Q. I show you Petitioner's Exhibits 866 and 867. Is Mr. Maxon's signature on each of these letters?—A. Yes.

Q. What?—A. Yes.

Mr. ROSENTHAL. Let me see them as you run through them and it will save time.

8510 Q. I show you Petitioner's Exhibit 871, in two sheets; the signature is on the last sheet. Is that Mr. Maxon's signature?—A. It is very faint, but it is fairly good. It can be identified. Yes.

Q. I show you this signature on Petitioner's Exhibit 872.—A. I don't recognize it; I can't read it.

Q. Too faint to recognize?—A. Yes; I can't read it.

Q. Petitioner's Exhibit 873?—A. Mr. Kellogg, that is too faint; I can't make that out. You will have to have a magnifying glass. I have studied it closely. I want to be sure about these things, you know.

Q. If you will sit around here and look at it in the light I think you will find it is perfectly plain.—A. I want to be certain about it, you know. [Moving over to the window.] It is very faint, but I guess I will have to pass it—recognize it.

Q. You think that is his signature?—A. Yes. It is awful weak, but——

Q. Petitioner's Exhibits 874 and 875. If you will press them down against the paper on the back.—A. Yes, that is what I have done. You can't make anything out of those signatures, either one of them.

Q. You think 874 and 875 are too faint to recognize?—A. Yes, too faint to distinguish.

Q. Petitioner's Exhibits 876 and 877?—A. 876 is all right, but 877 is too weak; I can't see it.

Q. Petitioner's Exhibit 878?—A. That is too weak to distinguish anything. It just looks like a few light blurs.

8511 Q. Petitioner's Exhibits 879 and 880?—A. There isn't anything on either one of those. You can just see a little black shadow mark.

Q. Petitioner's Exhibit 881?—A. I can't read it.

Q. Petitioner's Exhibit 882. Is that letter, the whole letter, in Mr. Maxon's handwriting?—A. That is all right.

Q. It is in his handwriting?—A. Yes.

Q. Addressed to Mr. E. B. Stanley, general manager of the Standard Oil Company, Cincinnati, Ohio, isn't it?—A. Yes.

Q. Petitioner's Exhibit 883. Please look at the signature attached to that.—A. Yes, that is Mr. Maxon's signature.

Q. Petitioner's Exhibit 884. Is the whole letter in Mr. Maxon's handwriting?—A. The signature is very weak.

Q. Well, what is the rest of it like?—A. It looks like Maxon's handwriting.

Q. Petitioner's Exhibit 885. Wait a minute. Petitioner's Exhibits 886 and 887?—A. Is this an exhibit? I can't tell what that is, there is nothing to it. That is his signature. 886 I will identify. 887 I don't know, I can't see anything on that.

Q. 886 you identify as his signature?—A. Yes, that is right.

Q. Petitioner's Exhibits 888 and 889?—A. 888 is all right. 889 I can't see a thing on it, there is nothing to it.

Q. Petitioner's Exhibits 890 and 891?—A. 890 is all right, and 891 is all right.

Q. Both signatures of Mr. Maxon?—A. Yes.

Q. Petitioner's Exhibit 892?—A. That is all right.

8512 Q. Petitioner's Exhibits 893 and 894?—A. I can't identify either one of those. That looks like all one word; you can't make anything out of it. And that is so faint that you can't read it.

Q. Petitioner's Exhibit 895?—A. That is all right.

Q. That is his signature?—A. Yes.

Q. Petitioner's Exhibits 896 and 897?—A. This 896 I can identify. 897 I can't.

Q. Where is Mr. E. B. Stanley?—A. Mr. E. B. Stanley is in this room, I think, or was a few minutes ago.

Q. He is in this room you say?—A. Yes.

Q. He is general manager of the Standard of Kentucky?—A. He is not.

Q. He was at one time?—A. He was at one time.

Q. Does he live here in New York now?—A. He does not.

Q. Where does he live?—A. He lives in Cincinnati.

Q. Letters written to Mr. Stanley and to Mr. Elliott, on business of the Standard Oil Company, are in your office, are they?—A. You mean are they there now?

Q. Yes.—A. I don't know.

Q. Don't you keep your letters?—A. I do for a certain length of time, yes.

Q. Have you destroyed any within the last two or three years?—A. I couldn't say positively as to what letters we have destroyed. We have certainly destroyed some, because we have made two or three moves, and I know that——

8513 Q. When did you move your offices?—A. In 1906.

Q. From what place?—A. Cincinnati.

Q. To what place?—A. Covington.

Q. Did you destroy your letters at that time?—A. I don't remember; we destroyed some letters, but how extensively I don't know.

Q. Have you the letters in your office written to you and to Mr. Stanley and Mr. Sanford and your other employes on Standard Oil business in the years 1898, 1899, 1900, and down to 1906?—A. I

couldn't say positively on that head. I don't know how far they have gone back.

Q. Do you keep letterpress copies of all letters sent out of your office?—A. We do in some cases.

Q. Do you in all cases?—A. No; we do not in all cases.

Q. Do you keep letterpress copies of your letters sent to your special agents on business for the Standard Oil Company?—A. I don't think we keep letterpress copies. I think we keep carbon copies.

Q. Do you keep carbon or letterpress copies of all your correspondence?—A. I think we do; yes. I don't say all of it, but the majority of it, of course.

Q. Substantially all of it?—A. Yes.

Q. Are those letterpress or carbon copies preserved in your office?—A. For a certain length of time after they are written.

Q. Well, you say for a certain length of time. Have you a rule for destroying them?—A. No; I don't think we have any positive rule.

Q. Have you destroyed any within the last four or five
8514 years?—A. Yes.

Q. What for?—A. Because we had no room to store them; no further use for them.

Q. Couldn't you store your letterpress books without much inconvenience?—A. I don't think we had letterpress books.

Q. Your manifold copies, then.—A. No; we couldn't; we had no place to store them. We were moving into temporary quarters. We stayed there a while and then moved again.

Q. I desire you to produce the originals of these letters written to Mr. Stanley and Mr. Elliot, Exhibits——

Mr. ROSENTHAL. Can't comply with that——

Mr. KELLOGG. Just wait until I get through.

Mr. ROSENTHAL. You have gone far enough—until you show there are originals of these letterpress copies.

Mr. KELLOGG. If you will wait until I make the demand you will have time to refuse, as I expect you will refuse.

Mr. ROSENTHAL. I might disappoint you on that.

Mr. KELLOGG. Please read what I stated.

The reporter read as follows: "I desire you to produce the originals of these letters written to Mr. Stanley and Mr. Elliott, Exhibits——"

Mr. KELLOGG (continuing). Exhibits numbered 859 to 879, inclusive, and also those written to Mr. L. H. James included in the same numbers. Each one of the originals of those letters. Will you do so?

WITNESS. I will not.

Q. You will not? Why?—A. On the advice of my attorneys that this is not a proper form of request.

8515 Q. You refuse to produce them?—A. No; I don't refuse.

Mr. ROSENTHAL. He has told you why.

Q. What form of request will you produce them upon?

Mr. ROSENTHAL. He will produce them when his counsel advises him to produce them. You know that the request is not properly made to a witness while on the witness stand.

Mr. KELLOGG. I know that it is perfectly proper.

Mr. ROSENTHAL. Well, you keep on making them to the witness and the witness will keep on refusing.

Q. You decline to produce them, do you?—A. Well, I can't produce them until my attorneys advise me to produce them.

Q. You are advised not to produce them, are you?

Mr. ROSENTHAL. No, not at all; he is advised that the form of request is not proper, and until you make your request in proper form he is advised to tell you so.

Mr. KELLOGG. He is?

Mr. ROSENTHAL. Yes, sir.

Q. Are you advised by your counsel not to produce these letters?—A. I am advised that until the application is made in proper form I am not to consider the application.

Q. Do you refuse to produce them?—A. No; I don't refuse. I simply say that when the application is made in proper form, then I will consider it.

8516 Q. What is the proper form?—A. You will have to confer with my attorney on that subject.

Q. I will.

Mr. ROSENTHAL. Yes; we will tell you.

Q. Do the papers exist in your office?—A. That I couldn't say.

Q. Have you made any search?—A. I have not, sir.

Q. Will you do so?—A. I will not until my attorneys advise me to.

Q. Now, did Mr. Elliott have any business in your office, except that of taking your letters in shorthand?—A. Yes; I think he took the letters of some other men around the office, and in addition to that I think he looked after the question of paying taxes on real estate.

Q. He looked after the question of paying taxes on real estate?—A. Yes; he kept a kind of a record of it. He didn't pay any, but he kept a record of the taxable property, etc.

Q. Did he correspond with people about that?—A. I think he did about the real estate question.

Q. Did he have any other business?—A. No.

Q. Didn't he look after the correspondence and the payments made to your agents for information furnished by competitive shippers?—A. He never did under my jurisdiction. If he did it I didn't know it.

Q. Didn't he look after competitive shipments?—A. I don't think he did. Not under my jurisdiction.

Q. He did not under your jurisdiction?—A. No. That has been eight or nine years ago.

Q. Did he not under your jurisdiction look after the corre-
8517 spondence with your special agents about competitive shipments?—A. I wouldn't say, because I never looked over his correspondence. All I know about the competitive shipments is that at certain periods I was furnished with sheets or reports on our busi-

ness and the total volume of business of the different concerns, including our own. That was about the extent that I knew of it.

Q. Who did look after the correspondence about those competitive shipments?—A. It properly ought to have been in the treasurer's department, because they kept all the records of every description.

Q. To whom did your special agents send their reports about competitive shipments?—A. They would send them to the treasurer—should send them. I wouldn't say positively where they did send them, because that is a matter that is kept track of by the accounting department.

Q. Does the treasurer have charge of the accounting department?—A. The statistical department was in the accounting department under the treasurer.

Q. Under the treasurer?—A. Yes, sir.

Q. And the correspondence about these competitive shipments was with the treasurer, was it?—A. Should be; yes, sir.

Q. Then, why did a large amount of that correspondence take place with Mr. Stanley?

Mr. ROSENTHAL. I object to that. There is no proof that any correspondence ever did take place with Mr. Stanley.

Q. Will you answer the question?—A. I don't know; I don't recall ever seeing any of that correspondence until I saw some
8518 of those letters of Maxon's there.

Q. Do you know that such correspondence did take place with Mr. Stanley?—A. No, I do not.

Q. Did it take place with you?—A. It did not.

Q. Were they sent to you from the treasurer's office?—A. A general report would be sent from time to time, monthly or quarterly (I don't remember), a compiled statement.

Q. Isn't it a fact that Mr. Elliott in your office had charge of the subject of competitive shipments?—A. If he did so he did so under the treasurer, and I knew nothing about it.

Q. Did the treasurer have authority to give him directions to do that?—A. He certainly had.

Q. He had?—A. Yes; as it was an accounting proposition, a statistical record.

Q. Did he spend most of his time in your office?—A. No, he did not.

Q. Part of it in the treasurer's office?—A. I think his office was in the treasurer's.

Q. His office was in the treasurer's?—A. His desk was in the treasurer's office—not in his office, but he had a room of his own, but I think it was on the floor that the treasurer was located, as far as I know.

Q. But he had a room of his own?—A. Yes; an office of his own.

Q. In the building of the Standard Oil?—A. Had a small cubbyhole upstairs; I don't remember just where it was.

8519 Q. Now, that was under the treasurer, was it?—A. Yes.

Q. And during that time the treasurer had charge of the correspondence in relation to information about competitive shipments?—A. That was where it would properly go.

Q. How happened it that Mr. Elliott was your stenographer if he had an office in the treasurer's office and was under the treasurer?—A. As I said before, I inherited him. I never was very much stuck on him as a stenographer, because he was deaf, and I only took him on when I was crowded and my other men didn't have the time.

Q. And then most of the time he was working under the treasurer?—A. Yes; quite a good deal.

Q. In his own office?—A. I don't think he did a great deal of work, anyhow.

Q. Well, he seems to have received a great many letters about competitive shipments.—A. So I saw.

Mr. ROSENTHAL. Not in the record.

Mr. KELLOGG. Now, you can argue when I get through. I know you don't like it.

Mr. ROSENTHAL. Oh, I am delighted with it; but why assume in your questions things that you have not proved? If you will simply modify the form of your questions, these objections won't come along.

Mr. KELLOGG. If you will just enter your objections.

Mr. ROSENTHAL. I object to the form of the question, because it assumes that Mr. Elliott received a letter, whereas the record in this case doesn't show that he ever received any.

Q. When did your counsel advise you not to produce the
8520 originals of these letters?

Mr. ROSENTHAL. I object to that, because the witness has not testified that I ever advised him not to produce these letters which you have just called for. All that he has testified to is that I have advised him not to comply with a request which you might make of him on the witness stand to produce documents, because such request should be made to counsel in the case and not to the witness.

Q. You have charge of the general business of the Standard Oil of Kentucky, have you?—A. Yes.

Q. And of all of its departments?—A. Yes.

Q. The treasurer is under you?—A. Yes.

Q. And all the other officers and employees of the Standard Oil Company?—A. They are.

Q. And you have authority to produce any document or letter in your office, haven't you?—A. Yes.

Q. Or in the office of the Standard Oil Company?—A. Yes. Well, that is, I would if my superiors—I have two superiors, a first vice-president and a president.

Q. Do you have to call your superiors to find out if you can produce a letter?—A. I might have to; yes.

Q. Well, do you have to?

Mr. ROSENTHAL. Produce it where?

Q. Do you have to call upon your superiors to find out whether you can produce a letter?

Mr. ROSENTHAL. I object to that, because the question is in-
8521 definite, and I submit that the question should indicate to the witness where he might be called upon to produce a letter.

Q. Please answer the question.

Mr. ROSENTHAL. If you step into his office and ask him to produce a letter, that is one thing; if you ask him to produce a letter in court, that is another thing, for which he might require authority.

Q. Please answer the question.—A. What was the question, now?

(The last two questions were read.)

WITNESS. It depends on the circumstances.

Q. Have your superior officers ordered you not to produce any of these letters?—A. They did not; I haven't conferred with them.

Q. Have you authority to produce them?—A. I have not.

Q. Where must you get that authority from?—A. I would prefer to consult the president.

Q. Who is the president?—A. C. M. Pratt.

Q. Where does he live?—A. He lives, I think, in Brooklyn; I don't know positively. I have understood that is where he lives. I have never been to his residence.

Q. In the management of the business do you have to consult Mr. Pratt?—A. On important matters.

Q. You do?—A. Yes.

Q. Do you consult him about the prices you make for oil?—A. No, not as a rule.

Q. Do you consult him about the appointment of any of your agents or correspondence with them?—A. Well, yes; in some cases I would consult with him about them.

Q. Do you consult him about the correspondence you have
8522 from day to day with these special agents?—A. No.

Q. Would you consult Mr. Pratt before you answered letters to Mr. Maxon?—A. No.

Q. Would you have to consult Mr. Pratt as to whether you would produce those letters and show them to anybody?—A. That depends on who wanted them.

Q. Oh, you have got to consult Mr. Pratt before you can produce them as evidence to the Government, have you?—A. No; I don't say that. I have given you the reasons why I would not produce them on your request.

Q. And those are the only reasons you have got?—A. That is all. I will stand on that.

Q. Simply you were advised by counsel not to do it?—A. I will stand on that.

Q. All right. Now, no one had any authority to pay out money to the subagents or to any of your agents for information about competitive shipments without your knowledge?—A. That is correct.

Q. And you never gave any such authority?—A. I did not, sir.

Q. And no money was ever paid out of the Standard Oil Company as compensation for furnishing information about shipments of your competitors?—A. Not with my knowledge, sir.

Q. Not with your knowledge?—A. No, sir.

Mr. ROSENTHAL. You have not shown any during the time he was in charge, either.

Q. How far back does that statement cover?—A. It covers
8523 as far as I have had any control of the Standard Oil Company's business.

Q. How many years?—A. That would be, say, to 1900.

Q. Since January, 1900?—A. Since I was second vice-president.

Q. The treasurer had no authority to send money for that purpose?—A. He has not.

Q. Mr. Elliott had no authority?—A. He had not, sir.

Q. Mr. Stanley had no authority?—A. He had not.

Q. And you never knew of such money being sent?—A. No, sir; I did not know of any such money being sent.

Q. Can you explain this large amount of correspondence asking for such payments?—A. I can't explain it; I don't know what it is; it is the first I have ever seen or heard of it.

Q. The first you ever heard of it?

Mr. ROSENTHAL. I object to that upon the ground that there is no proof that there was any correspondence. No letter is produced here coming from the Standard Oil Company or any of its agents, excepting the alleged Maxon letterpress copies.

Q. Here are a number of letters from Maxon asking for remittances to pay for information as to outside shipments.

Mr. ROSENTHAL. What date?

Mr. KELLOGG. From 1898 to February, 1900.

Mr. ROSENTHAL. How many?

WITNESS. All news to me.

(Paper marked Petitioner's Exhibit 898.)

Q. I show you Petitioner's Exhibit 898. Is that in the handwriting of Mr. Maxon? Look at the whole letter, I mean.

8524 [The witness takes the letter over by the window.]

Mr. ROSENTHAL. Is that one that is in already, Mr. Kellogg?

Mr. KELLOGG. No.

A. The handwriting looks like Maxon; the signature I can't read.

Q. The handwriting in the letter is perfectly plain, isn't it?—A. The handwriting of the letter, yes; but the signature is not plain.

Q. The handwriting in the letter, omitting the signature, is the handwriting of Mr. Maxon, isn't it?—A. I should say it is, as near as I can make out, but it looks a little queer. One thing is, that he does not spell my name right.

Q. How do you spell your name?—A. C-o-l-l-i-n-g-s. If Maxon wrote that it looks as though—he certainly knew my name.

Q. It looks like his handwriting, doesn't it?—A. In a general way.

Q. Did you receive that letter from him?—A. I don't think I did.

Q. You don't think you did?—A. I couldn't tell.

Q. Please read it over and see whether you received that letter from Maxon or whether you didn't.—A. All right. It is dated in '99.

Mr. ROSENTHAL. What is the date?

WITNESS. '99.

Mr. ROSENTHAL. 1899?

WITNESS. Yes. About nine years ago.

8525 Mr. ROSENTHAL. I wasn't sure whether it might not go back to 1799.

WITNESS. I couldn't positively say that I received that letter. How can I say? Nine years ago!

Q. What is your recollection? You were the general manager then, were you?—A. Yes; I was the general manager.

Q. Mr. Maxon was under you?—A. How does he address that letter? He has got my name wrong there.

Q. "C. T. Collins, G. M., Cincinnati, Ohio." That is correct, is it?—A. Yes; but then the name being spelled wrong, it looks rather suspicious to me.

Q. Were you general manager at that time?—A. I was.

Q. In charge of the Illinois territory?—A. No.

Mr. ROSENTHAL. This is addressed "C–o–l–l–i–n–s."

WITNESS. That is what I say. I was not in charge of the Illinois Standard Oil. It was under Ritchie. It looks rather fishy.

Q. Do you say you received that letter or do you not?—A. I will say I did not, because it looks fishy all around.

Q. Now I will read it and see:

"Mr. C. T. COLLINS, *Cincinnati, O.*

"DEAR SIR."——

Mr. ROSENTHAL. Are you reading from a copy of this alleged copy?

Mr. KELLOGG. Yes. I will read from that if you will hand it to me. If you have no objection, I will read from the copy.

Mr. ROSENTHAL. Not a bit, only get the spelling of the proper name right.

8526 Q. (Reading:)

"It is my understanding that no one connected with this office was to know anything about the Paragon Oil Co., so I suggest that all letters referring to their Mr. Kercher or John Maxon be sent under personal cover, as the general mail from your office is opened by Mr. Brown and Mr. Hinch. It will hurt us to have it known that the company own the Paragon Co. The Merchants Oil Co. are now making a house to house canvass.

"Yours truly,

"M. MAXON.

"P. S.—I refer to letter from Mr. Sanford 11/9."

Mr. ROSENTHAL. Is that all you can read, or is that all of the letter?

Mr. KELLOGG. That is all of the letter.

Q. Now, you say you never received such a letter?—A. I will say that it is impossible to positively state one way or the other, because the period of time is so great that I can't recall it.

Q. Well, you knew about the Paragon Oil Company?—A. Oh, yes; I knew about them.

Q. And you knew it was being kept secret?—A. Yes.

Q. And you knew that Mr. Kercher was handling it?—A. I don't know whether Kercher or Maxon was handling it at that time.

Q. Well, it was being handled by some of your men?—A. Yes.

Q. Now, you were writing other letters, or your agents were, into that territory at that time about the business of the Standard Oil Company, weren't you?

Mr. ROSENTHAL. Whom do you mean by "your agents?"

Mr. KELLOGG. Mr. D. P. Sanford and Mr. Stanley.

8527 Mr. ROSENTHAL. I mean, do you mean the agents of the Standard or Mr. Collings' agents?

Mr. KELLOGG. The Standard, of course.

WITNESS. Yes; Mr. Sanford was in Mr. Stanley's department.

Q. And you had charge of the whole business at that time?—A. I did, sir. That is, I presume you refer to the same time as that letter of Maxon's there, of 1899.

Mr. KELLOGG. Yes. I offer the exhibit in evidence.

WITNESS. What is the date of that letter?

Mr. KELLOGG. November 10, 1899.

WITNESS. Oh, I will have to correct that; I will have to ask him to cut that out—that answer that I was in charge of the entire business. I was not at that period.

Q. Well, you were in charge of this business in Illinois at that time, weren't you?—A. I was not, sir, in 1899; I was not—not in 1899. Mr. Ritchie was the general manager of this northern field—that is, Illinois and Indiana.

Q. I show you this letter, Petitioner's Exhibit 775. That letter seems to have been written by Mr. Sanford in your name.—A. Well, that is all right; he might have done that; I didn't know anything about it.

Q. He wouldn't be signing your name without authority, would he?—A. He didn't have any authority to sign that.

Q. He didn't have any authority to sign that letter?—A. No; because he should have signed that letter in Mr. Sanford's name—I mean in Mr. Stanley's.

Q. He should have signed that letter in Mr. Stanley's

8528 name?—A. Mr. Stanley was under me.

Q. You had general charge of the business in 1899, hadn't you?—A. It is right hard to identify the date when Mr. Ritchie retired. When Ritchie went to Cincinnati I was the general manager of the entire field in the north, and remained so for quite a while; I don't remember how long, but I know positively that after 1900, when I became the second vice-president, Mr. Ritchie resigned the position of general manager of the northern field. So it is difficult to say. He might have resigned some time in 1899—I can't say—and it might be that I was the general manager of the northern field in 1899, but it is difficult to identify the exact dates when that change took place.

Q. Well, you don't say, then, that you were not the general manager in 1899?—A. No; I wouldn't say positively. What is the month?

Q. October and November, 1899.—A. Well, I say it might be possible that Mr. Ritchie resigned some time in 1899 as general manager and I took the entire field as general manager.

Q. You don't say that you didn't receive this letter from Mr. Maxon—the one marked 898?—A. That is the one addressed to Collins?

Q. Yes.—A. No; I am not prepared, Mr. Kellogg, to say positively one way or the other whether I received that letter or not. It is a long while ago. It is difficult to remember a thing of that sort; it is impossible, that is all.

Q. Now, isn't it a fact in the large amount of correspondence you had from Mr. Maxon, he spelled your name C–o–l–l–i–n–s?—A. That is the first time I ever saw it. I don't think he did. He certainly knew my name, and he saw how I signed it and he saw it printed on the head of my letterheads, and I don't understand how a man can go—I say he may have written others. That is the first time I ever saw them.

(A recess was here taken until 2 o'clock p. m.)

8529 (Papers marked Petitioner's Exhibits 899 to 904, inclusive.)

Q. Mr. Collings, I show you some letters, Exhibits 899, 900, and 901. Were those letters written by you?—A. That letter in all likelihood was. [Handing paper to Mr. Kellogg.]

Q. Which one is that—899?—A. Yes. And refers to a matter of prices. That letter (Exhibit 900) was not written by me; I don't recognize that handwriting at all; I don't see where that could come from.

Q. A little louder.—A. That is a handwriting that I don't recall at all.

Q. Isn't it W. F. Guthrie's handwriting?—A. I think I would.

Q. Isn't that Mr. Guthrie's handwriting?—A. I don't think it is.

Q. That isn't your letter, then?—A. No, I never wrote the letter, that is a sure thing; I don't know anything about it.

Q. Did anybody in your office write it?—A. It is possible; it must have emanated from my office, because it has got my paper, but I don't know. Oh, that letter wasn't written by me—901. That is a letter to be written by Mr. Stanley. What is the date of that letter?

Q. June 19, 1902.—A. That was probably written by Mr. Stanley's department—the general manager. It is not the class of letter that I would write.

Mr. KELLOGG. I offer in evidence Exhibits 899 and 901.

8530 Mr. ROSENTHAL. I object on the ground that the letters are immaterial and not properly proven.

Q. You state in Exhibit 899: "I wired you to advance your price on gasoline at Terre Haute ½c., which will give you a margin of 1½c." What do you mean by a margin of 1½c.?—A. 1½ from the tank-wagon price.

Q. You testified that the usual margin was 2 to 3 cents, didn't you?—A. I did.

Q. A good many times Mr. Kercher's peddling wagons didn't have any margin, did they?—A. Well, I would have to see the figures to tell you that.

Q. Don't you know they didn't?—A. No, I don't; no, sir.

Q. Don't you know they were losing money at times?—A. No, sir.

Q. You don't know that?—A. They might have been losing money from Mr. Kercher's standpoint, but not from mine.

Q. I show you petitioner's Exhibit 903. Was that written by Mr. Sanford in your office?—A. Yes, probably. Not in my office; written in the general manager's. That looks something like—that is not Sanford's signature.

Q. Whose is it?—A. It is signed "D. P. Sanford, per H."

Q. Who is "H.?"—A. I suppose the same man that wrote this.

Q. Well, it was written in the office, then?—A. I don't question it, but I don't know. It has got no letterhead on it. Any one could sign that that way.

Q. But lots of Mr. Sanford's letters and your letters were signed by "H," weren't they?—A. Yes.

8531 Q. You believe that to be the signature of the man that signed that letter—Mr. Hobbs?—A. It doesn't look much like it. I would have to read the letter to get sort of an idea what he is writing about, and then I could form some sort of an opinion.

Q. Well, you read the letter?—A. It reads like it. It may have been written by the general manager's department.

Q. I show you two other letters, Petitioner's Exhibits 902 and 904, signed in the same way, "D. P. Sanford, H." Were those written by Mr. Sanford or under his direction, or emanate from your office?—A. (After reading the letter.) Yes, they look like they could have been written in Mr. Stanley's department. That is the kind of material that they would work on.

Q. Are those letters, then, letters emanating from your office or from some department of your office?—A. Yes.

Q. They are?—A. Yes.

Mr. KELLOGG. I offer Petitioner's Exhibits 902, 903, and 904 in evidence.

Mr. ROSENTHAL. I object upon the ground that they are immaterial.

Q. Now, In Exhibit 903 Mr. Sanford says: "I am very anxious that you make a special effort at Springfield and see if the situation at this point can not be vastly improved. Our cost of marketing at this point is very high at the present time, showing quite a heavy loss." Doesn't that indicate that Mr. Kercher in his marketing, peddling business, was losing money?—A. That was figuring on the tank-wagon price.

Q. Oh, it was?—A. Yes, sir.

Q. When you say that these marketing companies made a profit, that is a profit at the price at which you fixed the oil?—
8532 A. The price at which we charged that peddling outfit on our books.

Q. Yes, and you could charge anything you pleased?—A. Well, we wouldn't charge them less than the cost, you can count on that.

Q. Now, you bought your oil of another Standard company, didn't you?—A. Mostly, yes.

Q. And the same party fixed the price for the seller and the purchaser?—A. How is that?

Q. The same power, the same party, fixed the price for the seller and the purchaser?—A. No, I think not.

Q. These prices you are talking about are from the Standard Oil Company of Indiana, aren't they?—A. Yes, and we generally paid them as much or more than we could buy oil from any other outside refiners for.

Q. Didn't make any difference what price they charged you, did it—the Standard Oil?—A. Well, it made a great deal of difference to the Standard Oil Company of Kentucky.

Q. Oh, yes; but the owners of the Standard Oil of Kentucky were the same as the owners of the Standard Oil of Indiana, weren't they?—A. I don't know about the owners of the Standard Oil Company of Indiana. I don't know who owns it.

Q. Now, when you are talking about the price of these marketing companies, it depends entirely upon the price you charge them for the oil, doesn't it?—A. Yes, we charge them just what we would charge any other large buyer, dealer; that is to say, a jobber.

8533 Q. What prices were you charging this concern?—A. In all probability charging that concern the refinery market plus the freight, and plus a quarter of a cent profit to our company, to the Standard Oil Company of Kentucky, as a jobbing profit.

Q. Then, you must know what the freight was in order to fix the charges, didn't you?—A. Oh, yes.

Q. You kept track of that, didn't you?—A. No, I didn't, but the freight department furnished me the figures from time to time.

Q. Then, you did keep track of it, didn't you?—A. I had to know what the oil cost me delivered at Springfield, certainly.

Q. And you knew that all over your territory?—A. Yes; we have a record of the freight from the refineries to the——

Q. Now, in a letter here, written by Mr. Sanford, Exhibit 904, to Charles Kercher, it is stated: "Replying to your favor of the 16th, you may commence on Monday to make a price of 8 cents per gallon on Prime White oil at Springfield, Ill., and we trust that you will be able to secure considerable of Mr. Solle's trade by having the benefit of this low price." That means the retail price, doesn't it—8 cents?—A. That would mean the retail price.

Q. What were you charging them for the oil?—A. I couldn't tell you now. It would take quite a while to go back and dig that up.

Q. As a matter of fact, you were charging 9 cents at whole-
8534 sale in many places in that territory, weren't you?—A. I couldn't say; I don't know. It is a long while ago. What is the date of that letter?

Q. 1900.—A. I couldn't keep the prices of the whole field, month by month and day by day, for years.

Q. You have been testifying from a statement. You have the prices, haven't you?—A. That is all right. I got those prices for particular records, but I didn't know anything about this proposition; therefore, I didn't obtain those figures.

Q. Eight cents was a very low price, wasn't it?—A. That depends entirely on what the primary markets were then, at that date.

Q. Do you know anything about what they were?—A. I don't know. I might look and see if I can find a price. What is the year there?

Q. 1900—A. (After looking through papers.) No, sir; I haven't a record here of the markets in 1900.

Q. Is there a man by the name of "M." that used to sign your name occasionally?—A. Yes, that is quite possible. If I could see the style of handwriting I could probably tell.

Q. I haven't got the handwriting here.—A. Well, I don't know who it is; I couldn't give you an idea, then.

Q. Do you know a man by the name of Hitchcock at Bremen, Georgia?—A. What is the name of the man?

Q. Hitchcock.—A. I never heard of him. Bremen is a very small town.

Q. You never heard of Mr. Hitchcock?—A. No, I never did; I can't recall him.

8535 Mr. KELLOGG. I want to examine Mr. Collings on the question of prices which he testified to some extent upon. I haven't had time to check them over with Mr. Durand yet, and we would like to have Mr. Collings excused until to-morrow morning, or some time to-morrow, at his convenience, until I can do that.

Mr. ROSENTHAL. Very well.

Mr. KELLOGG. Then, Mr. Collings may be excused until to-morrow morning at 10.30. I will take him up as soon as I can.

Mr. ROSENTHAL. That is all right. He wants to go away on Friday if he can.

Mr. KELLOGG. All right; I won't take more than an hour or two.

8536 ROBERT E. LASHLEY, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Mr. Lashley, where do you live?—A. Boston, Massachusetts.

Q. What is your business?—A. I am in the laundry business now.

Q. Were you formerly connected with the Standard Oil Company?—A. I was.

Q. At Peoria, I believe?—A. I was.

Q. When did you resign from the company?—A. In January, 1904, I think.

Q. Since that time you have not been connected in any way with the Standard Oil Company, have you?—A. No, sir.

Q. And you are not now?—A. No, sir.

Q. Did you formerly know a man by the name of Hibbs, who was in some way connected with the Peoria office of the Standard Oil Company?—A. I did.

Q. Mr. Hibbs has testified in this case, and he testified, among other things, that when he was a salesman, connected with the Peoria office, that he used to practice certain tricks in regard to lamp tests, and that these tricks were taught to him in your office, by his superiors; that he was instructed to use them in making lamp tests. Have you anything to say about that?—A. I employed Mr. Hibbs as a salesman and put him on the road.

8537 Q. When was that?—A. As near as I can remember it must have been in the early part of 1902. I gave Mr. Hibbs his instructions, but the question of fraudulent tricks was never talked of or mentioned in any way whatsoever; in fact was not necessary.

Q. What was Mr. Hibbs' position there?—A. When I first went to Peoria he was a tank-wagon driver, and later I gave him a position as a refined oil salesman.

Q. What were the lamp tests which are referred to? What was the necessity for them? Tell us about that.—A. It was simply a question of salesmanship in selling your goods. Our competitor would go into the town, and we were marketing our oil from tank wagons. He would sell from barrels in some places, and he was asking in some cases a higher price than we were, and in order to sell his goods to the merchants he would take the position that they were of a better quality than what we were selling, and in a great many instances a good salesman would convince the merchant that that was true, and they would perhaps buy a few barrels of oil of the competitor, or they had some regular customers. We would endeavor to see that customer. We would take two lamps of the same character, in many cases from the shelves of the customer, and fill them, one with our oil from the tank wagon, that we were selling, and fill one from the oil that he was buying from the competitor, in his store, and let them sit there and burn, in order that he might see for himself that one would burn as well as the other. There was nothing unfair in the test.

Q. Was there any particular time of the year when questions
8538 of that sort were apt to arise?—A. Yes, sir.

Q. What time?—A. Along in the fall, usually in the month of September, you would have more or less complaint. That was brought about by a lamp having been sitting around all summer, not having been used, and the burner many times would become filled with dust, it wouldn't be clean, and they would naturally bring the lamp out when the short days came; and maybe there would be oil

left in it, a small quantity, and they would attempt to burn it in that way, and if the lamp didn't burn properly they would naturally say that it was a very poor quality of oil they were getting. The competitor would come along; they made complaint to him; they would say: "We can't get any results from the oil we have got here." And he would say: "It is a poor oil you are getting from the Standard Oil Company; let me sell you a barrel. You take out that lamp and clean it and I will show you a good light, that will burn fine." The merchant would, a great many times, follow his advice, and he would get a good light. Naturally he would say: "This oil burns all right; I couldn't burn yours;" and he would continue to buy it, and in such a case of that kind we would instruct the salesman to show the merchant the truth of the situation.

Q. What instructions were you accustomed to give to your salesman in regard to having him make these tests?—A. I always instructed the salesman personally to educate, especially the store trade that handled refined oil, to the proper care of lamps, which was to keep the lamp clean, the wick properly trimmed, and in a good burning condition. The fact of the matter is that you could get
8539 a good light from most any oil that you would attempt to burn. We never tried to deceive the trade or to say to the trade that the oil was of a particularly fine quality, that we marketed, over and above that of the competitor.

Q. Did you give any specific instructions as to how comparative tests were to be conducted?—A. I did; yes, sir.

Q. What were they?—A. Well, I had some lamps in my office, lamps of the same character, and in starting out a new man, a man that didn't know much about it, I would show him how to trim a lamp, how to take care of it, how to put the lamp in condition, and what a great many of the causes were for a lamp not properly burning. There are a great many things that would cause trouble in that respect. One is that the vents of the burner become clogged. You take any oil and let it stand in a lamp all summer, and you couldn't get a good light from it.

Q. I understand those were your instructions in regard to the burning of the lamp?—A. Yes.

Q. But I am asking you now what you said to him in regard to the comparative tests between two kinds of oil?—A. I instructed Mr. Hibbs, and as well all other employees under my jurisdiction, to be fair in every particular, and in making a comparative test at a merchant's store or anywhere else to make the test under as like conditions as possible, have the lamps as near alike as possible, and in almost every case to use two lamps alike.

Q. You were special agent at that point, were you not, at that time?—A. I was.

Q. Did you have charge of the salesmen at that time?—A. I did.

8540 Q. And whose duty was it to give them instructions in such matters as you have stated?—A. It was my duty.

Q. Who was it that did give the instructions?—A. I gave the instructions.

Q. Where was it customary to get the lamps with which tests were made, such as you have described?—A. From the merchant that was handling the oil.

Q. You mean from the grocer, for example?—A. Yes; most of them had lamps in the store that they were using daily, and in most every case we would take two lamps of the same kind and character that were in use and have them put in proper order, and use those lamps. Where we could not get lamps of that character, if necessary, we would take two from the shelves. You take some skeptical man, he wouldn't want to bother much with it, and I think we have occasionally bought lamps and filled them, lighted them, and let them burn right on his counter, and go away and leave them. Usually went away and left them with him.

Q. How long would the test last?—A. Sometimes all afternoon, along up into the evening, several hours.

Q. It was not a matter of a few minutes, then?—A. No.

Q. Did you ever instruct or advise Mr. Hibbs, or any other salesman, or any other employee of the Standard Oil Company to make any fraudulent tests or perform any tricks in connection with the lamp tests that you have described?—A. I did not.

Q. You say that these took place generally in the autumn. How about the rest of the year? Did the same thing happen
8541 other times in the year or not?—A. Yes; it would happen at most any period of the year, but we received but very little complaint after the first of October.

Q. Did it ever come to your knowledge that Mr. Hibbs, or any one else, was using fraudulent tests or tricks in the matter of these tests?—A. No, sir.

Q. While you were special agent?—A. No, sir.

Q. Or at any other time?—A. No, sir.

Q. Now, he specified some five or six different devices which he said were tricks which he had used in conducting these tests. One of them related to the form of a lamp, taking one lamp with a shallow bowl and another with a deep bowl and using the shallow bowl for the oil of the Standard Oil Company and the deep bowl for the oil of the competitor, and he stated, as I recall, in substance, that the shallow bowl lamp would feed better than the other, and therefore the oil of your company would make a better showing. Have you got anything to say as to that?—A. Probably that might be true in a sense, but I think the grocery man would detect that immediately. I don't think that he would permit it.

Q. What might be true? What do you mean by that?—A. It might be true that after burning a lamp several hours and the oil became pretty well down, that the oil from the shallow bowl would burn a little the best, the flame would probably hold up a little better; but it does not seem to me that that would go in a test of that kind. I would hardly think that the merchant would permit it.

Q. Why not?—A. In the first place, those men are skeptic-
8542 al—the grocery man is, and he wants to be fair about it, as a rule. I hardly think that the grocery man would permit a thing of that kind being done. In my opinion, you could not carry out a successful test in that way, that would have the desired result.

Q. Why not?—A. I think you would show the grocery man at once that you were unfair in it. They generally insist on being fair in those things.

Q. Did your instructions to your salesmen in regard to these tests make any reference to the form of the lamp?—A. My instructions to the salesmen were most positive and very strict along the lines to make the test in lamps of exactly the same character and to be fair in every particular with the test, in conducting it. That was done so that after the test was made and the salesman would leave, it would be of some value; in other words, if the test was not made fair, the trouble would be on us again after he would leave the town. Hence, you could get no results from a test that was made in an unfair way.

Q. Now, he spoke of another alleged trick that he claimed to have used and to have been instructed in regard to, which consisted in a different method of trimming the wick in one lamp from that employed in the other. He said that he would trim off the wick used for the oil of your company very neatly, so as to produce a thin flame, and would spread out the wick used for the other oil, so as to produce a thick flame. What do you think as to the probability of that being successful with a grocer?—A. I hardly think there would be anything in that. I never gave that part of it much thought; in fact, I never heard of it until I read that testimony. I hardly
8543 think there would be any marked difference there.

Q. You mean that there would be no difference in the flame?—A. I don't think so.

Q. If it were possible to produce a difference in the flame, what would you say as to the probability of its being detected by a grocer, from your experience?—A. I think he would detect it. The groceryman usually would watch you very close in preparing these lamps—he would stand right over you. You had no opportunity, if it was your wish, to use deception; in fact, it was not necessary to use deception. My experience was, that the fairer you could show the groceryman that you were in the matter, the better the result.

Q. Did you conduct any of these tests yourself, personally?—A. I have.

Q. You are speaking now from your own experience?—A. I am speaking from my own knowledge.

Q. Do I understand from you that these tests were usually put into force after a competitor had tried to show, or professed to have shown, that his oil was better?—A. Yes.

Q. It is probable, is it not, in such a case, then, that the grocer would be watching your test very closely because of the fact that you were trying to persuade him that the competitor's claims were not genuine?—A. That is it, exactly.

Q. That would naturally make him suspicious, would it not?—A. That would naturally make him suspicious.

Q. Now, he spoke again of a method which he claimed to have adopted in regard to the length of the wick. He said that he would cut the wick for the lamp containing oil sold by the
8544 Standard Company, so that it hung down straight, cut it short, hung straight down, and merely touched the bottom, and that the other wick he left long, so that it curled up in the lamp, and he claimed that the short wick would draw better than the other. What have you got to say about that?—A. In the first place, I think if you prepared two lamps in that way and left a large quantity of wick in one and a very small quantity of wick in the other, the groceryman would notice it immediately. But, in any event, I hardly think it would make any difference as to the burning of the two lamps.

Q. As a matter of fact, at what point in a wick does the wick feed?—A. It feeds at all points; it takes it into the pores of the wick. It does not feed through the end of the wick.

Q. It does not feed through the end of the wick?—A. Oh, no.

Q. It feeds through all portions of the wick?—A. It feeds through all portions of the wick, so I hardly see how that could make any difference.

Q. He testified that he sometimes stopped up the holes under the burner, through which the draft of the lamp came, with the result of making the chimney black. What about the possibility of doing that?—A. That could be done. I think, though, however, that it would be detected immediately.

Q. Why?—A. In cleaning one of those burners—the grocerymen are pretty well posted, you know, in a sense. I think they would look at them to see if they were cleaned and kept in proper condition before you light the lamps.

8545 Q. His statement was that while he was fussing around the lamp to light it, preparatory to lighting it, that he would stop up some of the holes with dirty flour or some other material on his fingers.

Mr. CAMPBELL. Or chewing gum.

Q. Or chewing gum?—A. I never heard of it having been done. It probably could be done.

Q. Well, can you see how it would be possible to do it without detection?—A. I doubt it very much.

Q. If those holes were stopped up, how long before they would show in the black on the lamp?—A. It would show immediately, as soon as you would light it.

Q. You have testified that these tests lasted several hours.—A. You always had to burn them during an afternoon or evening; usually burn them in the evening, you know, and the grocerymen keep the stores open to 9 or 10 o'clock, in the country.

Q. If the chimney was black immediately in such a case and the test lasted half a day, how could that be done without detection?—A.

It could not be done. You would make your case worse to attempt anything of that kind.

Q. Never mind that; just answer my questions. Could that, under those circumstances, be done without detection?—A. I think not.

Q. One more trick that he mentioned as having been carried out by him was the bending of the burner in such a way as to let air in between the chimney and the burner for the purpose of making the lamp smoke. What do you say about the possibility of doing that without being detected?—A. I hardly think it is possible.

8546 Q. Why?—A. Because, as I said before, the groceryman watched you very closely when you were making those tests and preparing your lamps, and I think he would naturally detect a thing of that kind; it would be there before his eyes, and I hardly see how he could help but see it.

Q. Did you take any steps, independent of what you may have said to your salesmen, to instruct your customers how to use lamps, how they should tell their customers to use lamps?—A. Yes, sir.

Q. What were your methods of giving that instruction?—A. We had circulars that were furnished us by the company that gave the full information in regard to the care of the lamps, etc., and we endeavored to get those circulars into the hands of the consumer; that is, I mean the people that bought the oil from the grocer, which we would term the consumer, and as far as possible through the grocers; we would furnish the grocers with these circulars and they would send them out in their packages and in various ways.

Q. How generally did your customers, your trade customers, have these circulars?—A. We placed a great many thousand of those circulars with the grocers, that went out to the trade.

Q. But how generally did they have them?—A. Had them all through the territory.

Q. Do you mean to say that most or all of your customers had them?—A. Most all of them.

Q. I show you Defendants' Exhibit 91. Will you look at it and state whether that is a copy of a circular which was distributed

8547 from your office while you were special agent at Peoria, in the way that you have described?—A. I recognize this information as having been contained in the circulars which we sent out.

Q. Can you give me any idea how many of those circulars you distributed while you were there as special agent, or how many in any given year?—A. Oh, I should say we would distribute 50,000 of these in a year.

Q. 50,000 in a year?—A. Yes; possibly 75,000. That is hard for me to say. We used them very extensively.

Q. Through your trade?—A. Yes, sir.

Q. Now, did you while you were there as special agent, ever hear of any salesman, either Mr. Hibbs or anyone else, practicing any of these alleged tricks or unfair practices in conducting these lamp tests?—A. I never did.

Q. Did you ever instruct or advise or authorize any salesman to do any of those things?—A. I did not.

Q. Mr. Hibbs testified that he was instructed by the special agent to go to Monmouth and make arrangements with some one connected with different railroads to furnish him with bills of lading of the shipments of the Royal Oil Company, and that he did so, and that he received such information and paid the person who gave it two dollars a month, which money he subsequently received from you, either in cash or by check; and he later stated that you were the special agent by whom he was so instructed. What have you to say to that? Did you pay Mr. Hibbs any money for the purpose thus testified to?—A. I did not.

Q. Did you authorize anybody else to pay him any money for that purpose?—A. No, sir.

8548 Q. Did you ever give him the instructions which he testifies you gave him?—A. I never did, to Mr. Hibbs or anyone else.

Q. Did you ever instruct Mr. Hibbs to obtain information from any railroad employe as to shipments of any one of your competitors?—A. No, sir.

Q. Did you ever authorize any such instructions to be given?—A. No, sir.

Q. Have you any knowledge that any money was obtained or paid for that purpose, if it was so paid?—A. No, sir.

Cross-examination by Mr. KELLOGG:

Q. How did you get your information of competitive shipments into your territory?—A. Such information as we obtained usually came in the form of a report from the salesman. He would call on the trade, and we would not be selling the customer regularly, and we would naturally know or feel that he was buying his goods from some other source; and any good salesman would naturally inquire as to where he was buying, and he would report the oil that he was buying, and the quantity, as nearly as possible, as any salesman ought to do. And through another channel we got a great deal of information. We would buy empty barrels.

Q. What is that?—A. We would buy empty barrels all through the field, and these barrels are stenciled, and we could see immediately whom they were from.

Q. Shipments into your territory from outside of the terri-
8549 tory, where did you get your information as to those?—A. All the information that we ever had along that line was from the State reports, those made at the statehouse there. That was open to the public.

Q. I know, but did you receive information from the head office, the Standard Oil of Kentucky, that shipments were being made into your district from time to time?—A. No, sir.

Q. You never received any such?—A. No, sir.

Q. You looked up in your district independent oil that was being sold in your district, did you?—A. In some cases; yes.

Q. And you reported that to whom?—A. We reported that to the general office at Cincinnati.

Q. What man in the general office?—A. I think that information went to the treasurer's office.

Q. To whom did you address your communication?—A. That would be addressed to Mr. Holmes. I am not sure about that.

Q. Did you address such letters to Mr. Holmes or Mr. Kimball?—A. I do not recall ever having addressed any letters to Mr. Kimball.

Q. Did you address such letters to Mr. Holmes?—A. I think, as nearly as I can remember—it has been nearly five years since I was there or had anything to do with this business, but as nearly as I can remember we did not make those reports in the form of a letter. It was merely on a form, that was not addressed to anyone—merely the Standard Oil Company—and that went in our general envelope to Cincinnati.

8550 Q. That is, they had a form for reporting these competitive shipments?—A. Yes; regular forms.

Q. And that form contained the name of the consignor and the consignee, did it?—A. I think there was a column on that form for the brand of oil, the name of the customer, and from whom sold, or something like that.

Q. And the consignor?—A. I don't remember just exactly.

Mr. ROSENTHAL. He said to whom sold.

Q. To whom sold?—A. Yes; to whom sold.

Q. If it was sold to anyone in your district, his name appeared?—A. Yes.

Q. And the amount of the oil?—A. Yes.

Q. Whether a carload or barrels?—A. Yes.

Q. And the man who sold it to him, who shipped it to him?—A. Yes.

Q. Then, that would be the consignor, wouldn't it?—A. Yes.

Q. And the consignee?—A. Yes.

Q. And the car numbers, where it was in carloads?—A. Yes. We would get that information from the statehouse there. We had no occasion to make any such reports except the reports that were open to the public there.

Q. Let us see about it, then. You had such blanks to fill out, hadn't you?—A. Yes.

Q. And you filled them out from such information as you could get?—A. Yes, sir.

Q. And you sent them in to Mr. Holmes, the treasurer, in the general office?—A. We sent them to the general office, as nearly as

8551 I can remember, and I think I am correct on that. We didn't address them to anyone.

Q. You didn't address them to anyone?—A. No.

Q. You sent them to a box, didn't you, in Cincinnati?—A. No, sir.

Q. You didn't?—A. No, sir.

Q. You sent them to the treasurer of the Standard Oil Company?—A. No, those envelopes, as nearly as I can remember, were printed

"Standard Oil Company, Cincinnati." There was no box number on them.

Q. Now, do you remember the Royal Oil Company?—A. I do.

Q. That was an independent concern?—A. In so far as I know it was, yes.

Q. Selling oil in your district?—A. Yes, they sold oil in our district.

Q. Did you get information about those shipments?—A. No, sir.

Q. You don't recollect?—A. No, sir.

Q. Did you get this information from your soliciting salesmen, your local salesmen?—A. We got that particular information, that is, most all of it, in that way, yes.

Q. Did you from time to time furnish Mr. Hibbs lists of shipments of your competitors, into his territory, to investigate?—A. We would advise all of our salesmen as to what our competitors were doing, where they were getting our trade, as far as we could; as far as we could gather the information from our various sales reports.

Q. Hibbs was a traveling salesman, was he?—A. Yes.

Q. Now, you don't know where he got his information about
8552 these competitive shipments, do you?—A. That is, Mr. Hibbs?

Q. Yes.—A. No, I did not; I couldn't say, except that he——

Q. You don't know that he didn't get them from railroad employes?—A. I couldn't say, no, that he did.

Q. You simply say you didn't pay him any money for that purpose?—A. No, sir.

Mr. ROSENTHAL. He goes beyond that.

Q. Did you pay him any money for getting information?—A. No, sir.

Q. Did you pay anybody for procuring information?—A. No, sir.

Q. For their services?—A. No, sir.

Q. For looking up cars?—A. No, sir.

Q. Looking up competitive oil?—A. No, sir.

Q. You never paid anybody anything?—A. No, sir.

Q. Where did you get the information of the shipments of oil into your territory, which you furnished Mr. Hibbs?—A. As I tell you, we got them from a great many sources, from all of our salesmen, and the daily reports, etc.

Q. What territory was Mr. Hibbs covering?—A. As nearly as I can remember, he covered the whole field at various times. I think his territory was over west of Peoria.

Q. West of Peoria?—A. Yes, principally. I don't remember whether he worked east of Peoria or not.

(Papers marked Petitioner's Exhibit 905, 5 sheets.)

Q. I show you a letter addressed to Mr. F. L. Hibbs dated
8553 October 14, 1903.

Mr. ROSENTHAL. Letter or letterpress?

Mr. KELLOGG. A letter.

Mr. ROSENTHAL. It is a real letter?

Mr. KELLOGG. An original letter, yes; signed R. E. Lashley, special agent, L. Did you send him that letter?

A. I think I probably did. I did not personally write this letter, however.

Q. Who did?—A. I imagine this letter was written, from the various reports there, by one of the stenographers.

Q. In your office?—A. In the Peoria office, yes.

Q. Do you know the signature of the clerk there that wrote that?—A. No; I can't identify them.

Q. Who was "L?" Doesn't that mean that was dictated by you?—A. No, sir. I should say that this letter was written by a stenographer there in the office, one of the girls. I didn't sign that letter.

Mr. KELLOGG. I offer Petitioner's Exhibit 905 in evidence.

Mr. CRAWFORD. It is objected to as not having been proved and as immaterial.

Q. Now, Mr. Lashley, I notice here five pages of schedules of oil shipments to different parties in your district by the Royal Oil Company. Where did you get that information?

Mr. CAMPBELL. If you know such information was gotten.

A. I can only give you an opinion on that. I would assume from the time that it covers—it covers a period there of 30 days——

Q. Yes.—A. And as we had ten or fifteen salesmen in that
8554 field that that information was gathered from the various reports that came in from the field and compiled there by a clerk that looks over those reports and wrote that letter on the reports. I would assume that to be the case.

Q. Now, those shipments were made from outside of the territory into your territory, weren't they, by the Royal Oil Company?—A. I don't know where they were made from.

Q. You don't?—A. No; I couldn't tell from that; I couldn't tell you.

Q. Where did the Royal Oil Company ship its oil from?—A. Why, it shipped some there from Peoria. I don't know where it shipped it all from.

(Paper marked Petitioner's Exhibit 906.)

Q. I show you Exhibit 906. Did you write that letter?—A. I couldn't say that I dictated that letter.

Q. Was it written from your office?—A. I should say it was.

Q. I notice in the corner, "Dictated R. E. L." What does that mean?—A. I think it was the custom of one of the stenographers that worked upstairs to mark their letters in that way, as it represented the selling department, which I looked after personally. That is as near as I can remember. Mr. Bush worked downstairs, and I didn't look much after the equipment.

Q. What is Elaine oil?—A. It was a very fine grade of Pennsylvania oil.

Q. The highest grade oil you had, wasn't it?—A. Yes, sir.

Q. The highest priced oil you had?—A. Yes; that is Elaine. There was Elaine and Eocene. I am pretty sure Elaine was the highest priced oil.

8555 Q. It was considerably higher priced than the oil made by the Standard of Indiana, wasn't it?—A. I hardly think it was very much higher than what was sold there. As nearly as I can remember there must have been a difference of about a cent or so a gallon.

Q. A cent or so a gallon—that is quite a difference, isn't it, in oil?—A. Not for a product of that kind; I wouldn't consider it much.

Q. I notice in this letter you tell this man Hibbs to sell Elaine or Eocene to replace the high-grade National Light oil sold by the Royal Oil Company.

Mr. CRAWFORD. Wait a minute. The witness doesn't say anything of the kind. He expressly said that he did not write that letter. I object to the question as misrepresenting the testimony.

Q. Will you please answer the question?

Mr. CRAWFORD. I instruct the witness he isn't bound to answer the question in that form. It palpably misrepresents the evidence.

Q. Did this letter come from your office?—A. I think it did.

Q. It did? Written in your office?—A. I couldn't positively identify it as having been dictated by be, but my impression is——

Q. Or by somebody having authority in your office?—A. My impression is that that is a copy of a letter written to all the salesmen by some stenographer there in the office.

A. It is an original, isn't it? It is not a copy at all?—A. No, it would be an original, written to all the salesmen. We have some ten or fifteen salesmen, and that same letter probably went to all the salesmen.

8556 Q. That letter went from your office, then, didn't it?—A. I would assume that. I couldn't say positively that it did.

Q. That is your opinion, isn't it?—A. That would be my opinion.

Q. Very well. Now, in this letter you state: "I am going to take the liberty of sending you a copy of Mr. Collings' letter to me of September 8, in regard to our policy as to contracting on Elaine. This is in line with my talk of a few days ago in regard to agreeing to sell a customer, ten, fifteen, or not over twenty barrels of Elaine, White Seal, or Eocene, at a stipulated price, to replace so-called high-grade National Light oil, sold by the Royal Oil Company. You must bear in mind, and it must be distinctly understood, that we are not to make contracts of this kind, except with customers who insist on handling a fancy high-grade oil, or have been handling National Light from the Royal Oil Company. As you will see from Mr. Collings' letter, we are at liberty to take orders of this character for the present, at one cent per gallon less than our open market price to-day, f. o. b. Peoria, Galesburg, and Bloomington. The market to-day, f. o. b. Peoria, is 16 cents, Galesburg 17 cents, and Bloomington 17 cents.

Mr. ROSENTHAL. What is the question on that, Mr. Kellogg?

Q. Did you make those instructions?—A. The instructions you refer to as contained in that letter?

Q. Yes.—A. Is that what you refer to?

Q. Yes.—A. I assumed that they went out from our office.

8557 Q. Yes, sir. Now, the Elaine, White Seal, and Eocene are high grades of oil, aren't they?—A. I don't know. They are what you would term high-grade oil. I don't know that they are any better than the ordinary Prime White as far as burning qualities go—or Water White is what I mean.

Mr. ROSENTHAL. They are oil sold under special trade names, aren't they?

WITNESS. Yes; special trade names, and used in skeptical cases. I don't know but you can produce just as fine a light with Water White as you can with Elaine.

Mr. ROSENTHAL. And some of the trade want it?

WITNESS. Some of the trade would not be of that opinion, and we used that brand with a customer who wanted——

Mr. ROSENTHAL. A fancy name.

WITNESS. A fancy name.

Q. Those prices named in this letter, were they the prices of Elaine oil that day?—A. Well, I do not recall them—if you will let me see it——[letter handed to witness].

WITNESS. I could not give you, Mr. Kellogg, any of the markets, at either that or any other day; I don't remember them.

Q. Is that what you understand from that letter?—A. (Witness reads letter.) I would assume from this that the market at Galesburg was 16 cents, and 17 cents at Bloomington. I would assume that, that our prices were that at that time.

Q. For Elaine oil?—A. I would assume so.

8558 Q. Now, these tricks in burning lamps that you have been talking about, if the customer did not discover the trick, they could do those things, could they not, that he testified to?—A. They would have to be very thick if they did not discover it.

Q. Were not tests made at the consumer's as well as the merchant's?—A. Not to my knowledge.

Q. No tests ever made in the household?—A. I mean out in the house—in the residence, you refer to.

Q. Yes.—A. Not to my knowledge.

Q. You never heard of any such thing?—A. No; not to my knowledge.

Mr. CRAWFORD. That is all.

8559 L. J. DENSBERGER, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Where do you live?—A. Springfield, Illinois.

Q. What is your business there?—A. I am manager for Smith & Company fertilizer works.

Q. Were you formerly connected with the Standard Oil Company of Kentucky?—A. I was.

Q. At what office?—A. At the Peoria office.

Q. During what period?—A. From 1902 to 1908.

Q. And in what capacity?—A. As a salesman.

Q. Did you know Mr. Hibbs?—A. Yes, sir.

Q. Was he a salesman at that office during the time you were there, or a part of the time?—A. Yes, sir.

Q. Do you remember when he left the office, about?—A. In 1905, I think, some time in the winter.

Q. Did you know Mr. Lashley, who has just been on the stand?—A. Yes, sir.

Q. Who succeeded Mr. Lashley?—A. Mr. J. L. Trann.

Q. Mr. Hibbs has testified in this case to practicing certain alleged fraudulent tricks in connection with lamp tests, and stated also that all the other salesmen had been instructed to perform the same tricks, to do the same fraudulent things. Did you, while you were a salesman in that office, receive instructions in regard to making lamp tests?—A. Yes, sir.

8560 Q. From whom did you receive them?—A. My first instructions were received in Mr. Lashley's office, from Mr. Lashley personally.

Q. And what were those instructions?—A. Where I found a competitor marketing an oil at a higher price than ours and I thought by the matter of a lamp test I could convince that buyer that we had superior goods, I was instructed to make a lamp test.

Q. How were you instructed to make it?—A. To look about the store and find two lamps exactly alike, if possible. If they did not have them in use, that I could borrow from a dealer. I was to buy a pair, or get a pair off of his shelf, and fit them up with a new burner and a new wick, each of them, and a new chimney, and if I made more than one test in that particular town, I was to carry the lamps from that store to the next one, and use that pair of lamps in the town. I have done that a number of times.

Q. You were present and heard Mr. Lashley testify, did you not?—A. I did.

Q. Were you ever instructed by Mr. Lashley or by any other superior to use any of the alleged tricks spoken of by Mr. Hibbs—testified to by Mr. Hibbs, and which were referred to in Mr. Lashley's examination?—A. I never received such instructions as Mr. Hibbs brings out in his testimony.

Q. Were you ever instructed by Mr. Lashley or any other superior to use any unfair means or any tricks or fraudulent devices in conducting lamp tests?—A. I was not.

8561 Q. Did you ever use any tricks or fraudulent devices in conducting lamp tests for the Standard Oil Company in the period when you were connected with the Peoria office?—A. I did not.

Q. Or at any other time for the Standard Oil Company?—A. No, sir.

Q. Was there any literature in regard to lamps distributed while you were a salesman at that office?—A. There was.

Q. I show you defendants' Exhibit 91. Please look at it and state whether you recognize that as a copy of a circular that you have seen before?—A. Yes, sir, I have distributed thousands of those.

Q. Where did you distribute them?—A. Throughout my territory.

Q. To what persons or what classes of persons?—A. To the dealers, every dealer who was handling refined oil in my territory. I always carried a bunch of those in my grip. When I worked a town I carried a pocketful and distributed them, left them on the counter, passed them out pretty generally.

Q. Mr. Hibbs testified in regard to a dinner which he said took place at Peoria, at the Creve Coeur Club, at which he and Mr. C. H. Hand and other persons were present. He also mentioned Mr. J. L. Trann as having been present. Now, do you recollect that occasion, and were you there?—A. I attended that luncheon.

Q. Can you fix the date approximately?—A. It was the day Mr. Trann took charge of the Peoria territory, January 24, 1904.

Q. You mean when he became special agent?—A. Special agent; succeeded Mr. Lashley that day.

8562 Q. Who gave the luncheon, if you recollect?—A. Mr. Trann paid for the luncheon.

Q. And who do you recollect being there?—A. Mr. Hand, Mr. Trann, Mr. Bush, Mr. Jones, Mr. Annett, Mr. Hibbs, Mr. Firebaugh, and myself.

Q. How many persons?—A. There might have been more. That is all I recall. I believe there was—it was pretty much all the salesmen, and there are one or two that I can not recall that I feel o[illegible] sure were at that lunch.

Q. Was Mr. Lashley there?—A. No, sir.

Q. Did you hear the conversation at the luncheon?—A. I heard considerable conversation at the luncheon, yes, sir.

Q. Where were you sitting at the table in reference to Mr. Hand's seat?—A. Mr. Hand sat at one end of the table and I sat one chair removed from him, I think.

Q. Did you hear the part which he took in the conversation?—A. I heard everything he said, I think.

Q. Mr. Hibbs testified that on that occasion Mr. Hand told of an occurrence where he had furnished to one Robert Carlisle, a salesman, a certain sum of money to be used by him for the purpose of contaminating or spoiling a competitor's oil. Now, did Mr. Hand make any such statement at that dinner?—A. He did not.

Q. What statement, if any, did he make which might have been distorted into the story which Mr. Hibbs told?—A. Mr. Hand was—oh, we were friendly, and jolly, and telling stories, and gradually drifted into business, particularly Standard Oil business. We

8563 did not get to see Mr. Hand very often and he was giving us,

the immediate fellows sitting close to him, a little talk on methods of getting business. He says, "Boys, I don't want you to do anything underhand to get business. I do not expect it of you. I do not want you to do it." To illustrate his line of talk he mentioned that Robert Carlisle came to him a short while before and said, "Mr. Hand, we are going to lose a piece of business at Kokomo, Indiana." He emphasized the way Mr. Carlisle came to him. He was crying, or had tears in his eyes, he was so worked up over the fact that he was going to lose this business, such a nice piece of business in his territory, that he was very much put out about it and he said to Mr. Hand, "I believe I can hold that business or get it if I can have $100." But he said, "Bob, you can not have $100. You go and get that business, and you get it right, or we will lose it."

Q. This is what Mr. Hand said on that occasion?—A. Those were the words, or the general trend of that little happenstance.

Q. Of that little what?—A. "Happenstance" was the word I used.

Q. You mean——A. Circumstance.

Q. Was this Mr. Carlisle present on that occasion?—A. No, sir.

Q. Then, if Mr. Annett, another witness, stated, as I think he did, that Mr. Carlisle was present, he was mistaken, was he?—A. Mr. Carlisle was not at that meeting. I never met Mr. Carlisle in my life.

Mr. CRAWFORD. You may cross-examine.

Cross-examination by Mr. KELLOGG:

Q. Are you working for the Standard Oil?—A. No, sir.

8564 Q. How long since you have been?—A. April of this year.

Q. For whom are you working now?—A. Smith & Company.

Q. What is their business?—A. The manufacture of fertilizer.

Mr. KELLOGG. That is all.

8565 C. M. HAYES, called as a witness on behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Mr. Hayes, where do you live?—A. Peoria, Illinois.

Q. And what is your business?—A. City salesman for the Standard Oil Company—lubricating salesman.

Q. How long have you been connected with the Standard Oil Company there—employed by them?—A. Since October, 1902.

Q. Have you also had to do with refined oil?—A. Yes, sir; part of that time.

Q. What part?—A. 1903 and a part of 1904, if my memory serves me right.

Q. Were you a salesman in refined oil during that period?—A. I was a general salesman during that period, and I sold both refined and lubricating oil and specialties.

Q. You have been present and heard the testimony of Mr. Densberger, and of Mr. Lashley, I think?—A. Yes, sir.

Q. And you heard me question those witnesses in regard to the testimony of Mr. Hibbs concerning tricks which he said he had used,

and that other salesmen had used, in performing lamp tests?—A. Yes, sir.

Q. Did you ever have occasion to conduct any comparative tests of your oil and of some competitor's oil in Peoria, or in that territory?—A. Not in Peoria. I did in Monmouth, Illinois, and other places.

Q. Well, at any rate, in the territory that was connected
8566 with the Peoria office?—A. Yes, sir.

Q. Did you receive instructions from anyone in regard to conducting such lamp tests?—A. Yes, sir.

Q. From whom?—A. Mr. Lashley, Mr. Trann, and Mr. Bush.

Q. Did any one of those gentlemen ever instruct you to use any of the alleged tricks which Mr. Hibbs testified to?—A. No, sir.

Q. Or any other tricks or unfair practices?—A. No, sir.

Q. What were their instructions to you as to how you should conduct lamp tests if you had to do so?—A. I do not know as I could recall word for word, but the general instruction, the general application was to secure two lamps of the same character and kind, the same style of burner, and if possible, even the wick was to be the same; to put the competitor's oil in one lamp, our oil in the other, light them, and as we had many other duties to perform in that particular town, my practice was to leave those lamps and go on and finish my business, and go back and finish my test.

Q. After how long an interval?—A. Oh, two, three, or four hours, depending upon the time of day the test was started.

Q. Would the lamps continue to burn during that period?—A. Yes, sir, they were left with the customer making the complaint or with the customer where the lamp test was being made.

Q. These customers were dealers, were they?—A. Yes, sir, retail merchants.

Q. Not consumers?—A. No, sir.

Q. Now were you ever instructed or advised by any of these gentlemen whom you have named to do anything unfair in
8567 connection with these tests?—A. No, sir.

Q. As a matter of fact, were you not always instructed to conduct your tests fairly?—A. Yes, sir.

Q. Did you ever conduct any test in any unfair manner?—A. No, sir.

Q. Did you ever use any of the alleged tricks that Hibbs talks about, or any other tricks?—A. No, sir.

Q. To produce an unfair result?—A. It was not necessary at any time.

Q. Well, did you?—A. No, sir.

Q. You never did at any rate?—A. No, sir.

Q. Do you recall making a test in the presence of Mr. Hibbs?—A. Yes, sir.

Q. What did you do, and what did you and Mr. Hibbs do on that occasion?—A. I went in company with Mr. Hibbs to a retail store in Monmouth, for the purpose of making a lamp test. There had been

a complaint of the quality of the oil, and we—I say we; it was more he, because I was green at the time; I was a new salesman and had not made a lamp test previous to that time—he instructed me how to make the lamp test. I asked him to go with me, so that I could get the benefit of his experience. We went to the store and purchased two lamps from the merchant. Those lamps, as I recall them, were medium-sized glass lamps, the burners, I presume, of course were the same.

Q. How were they with reference to each other?—A. They were exactly alike. The oils were put into the lamps, a talk was made relative to the merits and quality of our oil as compared to competitors', and we went away and left the lamps——

8568 Q. Lighted?—A. Lighted—believing that the test of the burning of those lamps would convince the customer that the oil was right.

Q. Well, never mind——A. We returned, and the customer, as I recall it, was satisfied with the burning test. I always term those tests as burning tests.

Q. How long were you away at that time before you returned?—A. Between three and four hours.

Q. Now, were subsequent tests which were conducted by you conducted in the same manner which you have dsecribed as to this first one?—A. I did not catch all of your question, sir.

Q. When you had occasion to conduct any other tests of lamps at a subsequent time, did you conduct them in the same way that you have described as to your first test?—A. Yes, sir.

Q. And that first test you conducted according to instructions received from Mr. Hibbs and in his presence?—A. Yes, sir.

Mr. CRAWFORD. You may cross-examine.

No cross-examination.

8569 J. L. TRANN, called as a witness on behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. CRAWFORD:

Q. Mr. Trann, where do you live?—A. Peoria, Illinois.

Q. You are, I think, a special agent——A. Manager my title is now.

Q. Your title is manager?—A. Yes.

Q. Of the Standard Oil office there, are you not?—A. Yes, sir.

Q. How long have you been such manager?—A. Since January 24, 1904.

Q. You know Mr. Hibbs, I suppose?—A. Yes.

Q. F. L. Hibbs?—A. Yes, sir.

Q. Mr. Hibbs testified in this case in regard to certain alleged tricks and unfair practices which he said he pursued in connection with conducting lamp tests, and I am not sure whether he mentioned your name, but he states that he received instructions to use these tricks from his superiors. First tell me, how long was Mr. Hibbs

there at the office while you were there?—A. Until January—or until the end of February, 1905, he was there.

Q. Now, did you ever instruct Mr. Hibbs or any other salesman to use any of the unfair tricks to which he testified?—A. No, sir; never heard of any of those tricks before.

Q. Or any other unfair tricks?—A. I never did, sir. No one
8570 in my office ever instructed any salesman to do anything which was out of——

Q. Did you ever hear of any such tricks being used?—A. I never did.

Q. Do you believe it is possible that they could have been used without it coming back to your ears?—A. I do not believe it could. I do not believe any of those tricks that he claimed he used, that he used them at all. I would have known, I think. I have traveled over the territory a great many years, and knew so many of the customers that I am quite sure I have friends enough amongst them that they would have told me if anything like that had been done, if they had been hoodwinked in any such manner as that.

Q. What instructions did you give your salesmen in regard to their manner of conducting such lamp tests?—A. To get two lamps exactly alike, put new wicks in them, burners exactly alike, and chimneys, and label each lamp, label one lamp with our oil and the other with the competitor's oil, trim them exactly alike, fill them and light them, time them, and conduct a burning test of from one to two, three or four hours, just depending on the time they had to devote to it.

Q. Did you advise them to do anything that was unfair?—A. No, sir; to the contrary, I always told them that they must get lamps exactly alike, and treat both oils identically.

Q. Did you distribute any literature while you were in charge of the office, or have you been in the habit of distributing any literature in regard to the care of lamps?—A. Yes, sir.

Q. I show you defendants' Exhibit 91 and defendants' Exhibit 90. Please look at them and state whether they are copies of
8571 circulars which you recognize as having seen before.—A. Yes; there have been plenty, I would say thousands of those distributed through our field, through our office.

Q. You are speaking now of Exhibit 91?—A. Yes; 91.

Q. How about Exhibit 90?—A. I have seen thousands of those, but they have not been distributed so freely in Illinois. I have seen those in the South.

Q. They have been distributed in Illinois to some extent, have they?—A. Yes; I have seen those, but not to any great extent, but those others I have.

Q. Exhibit 91 you have seen distributed in large quantities, have you?—A. Oh, yes.

Q. Throughout Peoria and the adjacent territory?—A. Yes.

Q. To what class of people were they sent?—A. To dealers and salesmen, our salesmen and our agents. They were sent in large

quantities to our agents and salesmen to be distributed to the consumers and the dealers, in wagons, you know, along the streets, in villages. We instructed our salesmen to throw them into the wagons, to distribute them freely in every town. Those were the instructions they got.

Q. Do you yourself go through the trade occasionally, so that you can tell from personal knowledge whether these were distributed, whether they reached the trade?—A. Oh, yes; I know they did.

Q. You have seen them in stores?—A. Oh, yes; I have seen them in stores.

Q. What do you say as to the probability of these alleged tricks having been used?

8572 Mr. KELLOGG. Oh, let him testify to the facts. I object to his stating probabilities.

A. I do not believe they were used at all.

Q. Take the case of the alleged instance of the use of lamps of different forms, a shallow lamp and a deep lamp; why don't you believe they were used?—A. Oh, I do not think that a dealer would be so blind. He would discover that, you know. If any man went to make a lamp test, and had a shallow bowl for one light and a deep bowl for the other, it would be very noticeable. He would naturally ask why the lamps were not the same.

Q. He testified something in regard to wetting the wick in one of the lamps by moistening his finger and applying it to the wick at a point about an inch below the bottom of the burner, and he stated that that would have no effect until the oil had gotten down—until the level of the oil had gotten down to the point where the wick was wet. Now, as a matter of fact, how long would it take a lamp to burn down to a point an inch below the burner?—A. It would take quite a while. I never heard of such a trick.

Q. Would it not take an hour or two at least for that to happen?—A. Oh, yes; longer than that.

Q. So that that trick, assuming it to have been tried, would not produce any effect for an hour or two anyway, would it?—A. No.

Q. Mr. Hibbs testified that after he left the employ of the Standard Oil Company in 1905 he was employed, I think, for a while by the Royal Oil Company, and that he then, at any rate,

8573 started in and sold a carload of oil for that company, and that men were sent out by your office to have his orders countermanded by cutting the price or giving rebates, or giving money, and that you met this competition by giving fake orders. Now, do you recollect——?—A. Where is that?

Q. Do you recollect the occasion of his selling a carload of oil for the Royal Oil Company, if he did?—A. He did it, sir, at Farmington, the first week after he left our employ; after he left the Standard Oil Company.

Q. Is it a fact that the order for that carload was countermanded?—A. No, sir; it was not.

Q. What was the fact?—A. He sold a carload of oil there and it stuck. There was no effort made to countermand it.

Q. But in fact it was not countermanded, you say?—A. No, sir; it was not.

Q. The oil was delivered?—A. Yes, sir.

Q. Were any men sent out from your office to procure the countermanding of that order?—A. No, sir; there was not.

Q. By cutting the price, or in any other way?—A. I sent a man out there to learn why it was that they had sold a carload of oil there when we were making the town every other day by tank wagon from our Yates City station, and I learned that they had sold a carload of oil by underselling us a half-cent a gallon.

Q. Did you give that man instructions to secure the countermanding of the orders?—A. No, sir; I did not. Countermanding was never mentioned, never thought of.

Q. Did he make any efforts at countermanding?—A. No, sir.

8574 Q. He went to get intelligence, information, did he?—A. He did.

Q. Mr. Hibbs also testified that one Jerry Saffer and one Firebaugh were instructed by you or instructed by the management of your office to secure the countermanding of orders at Farmington and other places. Is that true?—A. Not to my knowledge. If he received any such instructions from those people at all it was unknown to me, surely. I know nothing of it.

Q. Was there anyone there who had any authority to give any such instructions except you?—A. Nobody could without they would take it upon themselves to do it, some clerk in the office. Then I would not know anything about it.

Q. Did you instruct any of your salesmen or other employees, or this man Saffer, or Firebaugh to cut prices below competitors' prices?—A. No; not below competitors' prices. I have instructed them to make contracts often to meet competitive prices.

Q. What do you mean by that?—A. Why, I had no authority—I could not cut the price of oil. I had a leeway that I could make a contract with a large dealer at a half cent below our market, and that is all I had to go by.

Q. Well, that was not confined to any particular dealer, was it?—A. No, it was not.

Q. That was the common practice for a large dealer, was it not?—A. A common practice where competitors were underselling us to get business. I had that differential to work on.

8575 Q. What instructions, if any, since you came to Peoria in January, 1904, have you given to your agents and salesmen on the subject of procuring the countermanding of orders?—A. I have talked with—after I had been in Peoria a very short time, a month or two, I talked with each one of them personally and told them under no circumstances could they or must they use any means to get customers to countermand orders given to any competitor.

Q. Did you ever say anything to Mr. Hibbs on that?—A. Well, I talked to him on that.

Q. What did you say to him?—A. I told him the only arguments he had to use were good ones, that our facilities for delivering and keeping them supplied were much better than the competitor had, and that our goods, the goods we were supplying, were a better grade of goods, and that he had that in his favor, and that that was a good talking point. That was all the instructions I gave him.

Q. Were you present at the luncheon which has been testified to here, and which Mr. Hibbs referred to, given at the Creve Coeur Club in Peoria early in 1904?—A. I was.

Q. What was the occasion of the luncheon being given?—A. Well, Mr. Hand came to Peoria with me from Cincinnati the evening prior to that day and the next day while we were up in our office we met all the salesmen there.

Q. Just one moment. What was the occasion of your coming to Peoria at all?—A. The occasion was, I was appointed manager at Peoria, special agent at that time.

Q. Who was Mr. Hand?—A. He was the general manager at Cincinnati.

8576 Q. Of the Standard Oil of Kentucky?—A. Yes.

Q. And he came up with you to Peoria?—A. Yes.

Q. And introduced you?—A. Yes, that is right, introduced me.

Q. To get you started?—A. Yes.

Q. Go on now and tell us how this luncheon came about.—A. Well, about half past 12 that day I suggested that we go down town for lunch, and one of our salesmen, Mr. Jones, who was a member of the Creve Cœur Club, said to me, "Mr. Trann, let us go to the Creve Cœur Club for lunch." Well, I said, "Can you arrange it so we can go there?" And he said "Certainly, I will go right to the 'phone now and call up the manager of the Creve Cœur Club, and he will have lunch ready by the time we get down there." So I said "All right." I asked him if he would do that and have the ticket made out to me, that I was not a member, but that I would become a member just as soon as they passed on my application, which was put in that day, and I was a member a short time afterwards. That was the occasion of the lunch. We were just simply all at the office there together and went down for lunch and came back to the office afterwards.

Q. Who was it that paid for the lunch?—A. I did. I paid for the lunch.

Q. You were the host, in other words?—A. It was charged to me, and I paid for it about a week afterwards, just as soon as I was a member of the club.

Q. But you were the host?—A. Yes, I was the host.

Q. Who were there, how many people?—A. Well, I just can not recall now the number, but my impression is that there were

8577 between twelve and fourteen people there at the table.

Q. Was Mr. Carlisle there—Robert Carlisle?—A. No, sir, he was not.

Q. Was Mr. Lashley there?—A. No, he was not.

Q. At that luncheon did Mr. Hand state that on some former occasion he had given one Robert Carlisle, a salesman, $100 or any other sum of money, to be used for the purpose of getting business by spoiling or contaminating a competitor's oil?—A. He did not, in my hearing; no, sir.

Q. Mr. Hibbs testified that on one occasion he gave two merchants at Astoria fifty to seventy-five gallons of oil to secure a countermand of an order or orders given by them to a competitor. Was any such gift of oil made to your knowledge?—A. No, sir.

Q. Could it have been made without your knowing it?—A. It could not have been made without my knowledge, without he (the agent) had paid for that amount of oil himself, to our agent at Astoria. He could have worked it that way if he was so disposed.

Q. But it must have come out of his own pocket?—A. It must have come out of his own pocket.

Q. But nothing of that sort ever happened with your knowledge?—A. No, sir.

Q. Or by your authority?—A. No, sir; none of that kind of business at all.

Q. Well, do you know of his securing any countermanding of orders at Astoria by any means?—A. No, I do not.

8578 Q. Or of sending telegrams for that purpose?—A. I do not.

Q. Mr. Ells, a witness called by the petitioner, testified that in 1905 he tried to sell a carload of oil at Farmington, Illinois, and found that the largest dealer in oil there was getting a rebate from your company. Do you know anything about the facts to which that may refer?—A. Yes; the largest dealers there at that time had a contract with us.

Q. What were their names?—A. Vandersleuth & Stoeke.

Q. What was the purport of that contract?—A. Half a cent below our market.

Q. Was that the usual allowance to large dealers?—A. Yes, sir; our usual contract price.

Q. Was there any other rebate there than that?—A. No, sir; none other.

Q. Was there any system of rebates inaugurated by you or by the Standard Oil Company since you have been the manager there at Peoria for the purpose of competing with the Royal Oil Company?—A. No, sir.

Q. Some testimony was given by Mr. Ells in regard to a Mr. Marshall, of the firm of Marshall & Company, at Manito, Illinois, and Mr. Ells testified that Mr. Marshall had not bought a gallon of anything from your company for ten or eleven years, which testimony was given in May, 1906, so that the testimony was that for ten or eleven years prior to 1906 this Mr. Marshall had not bought anything of your company. Is that true?—A. It is not true.

8579 Q. What is the fact on that point?—A. The facts are there has never been a year we have not sold them from $150 to $200 worth of goods, not a year—and the present year it exceeds that. That has been the case back prior to the time I took charge there. I have looked back through the records.

Q. How far back have you looked?—A. 1900, I think.

Q. 1900?—A. Yes.

Q. Is he buying of you now?—A. Yes; he gave us three different orders this year. He is not a large purchaser. He runs a hardware store. He does not buy very much in our line, very little; gasoline and axle grease, that is about all.

Cross-examination by Mr. KELLOGG:

Q. You say you never reduced the price or gave a rebate to compete with the Royal Oil Company?—A. I said I did on contracts, to compete with them.

Mr. KELLOGG. Read what he said about that (the stenographer read as follows): "Q. Was there any system of rebates inaugurated by you or by the Standard Oil Company since you have been the manager there at Peoria, for the purpose of competing with the Royal Oil Company?—A. No, sir."

WITNESS. Well, that is right, too. I answered your question wrong.

Q. That is a mistake, is it?—A. No; that is proper.

Q. Then you did not give any less than the market price to anybody to compete with the Royal Oil Company?—A. Why, we made contracts.

Q. Giving them less than the market price?—A. A half cent; yes.

8580 Q. To compete with the Royal Oil Company?

Mr. CRAWFORD. He doesn't say that.

A. No; we did that with large dealers—where the Royal Oil Company got trade away from us we have done that; yes.

Q. And you did it to get trade away from them?—A. No; we didn't.

Q. You did not?—A. I do not know of an instance where we did.

Mr. CRAWFORD. That was a universal custom, was it not, with the large dealers?

WITNESS. That was what I said a while ago. We do that.

Q. Then you did not do that to keep it away from the Royal Oil Company?—A. Maybe we did it in some cases; yes, we might have done it.

Q. That is what I want to get at.—A. If the Royal Oil Company went in and cut our price; if they bought sufficient quantities to make a contract we would probably make a contract with them.

Q. Did you make these special contracts with every large dealer, whether there was competition or not?—A. If they asked for it.

Q. Always?—A. Invariably.

Q. Could every large dealer in your territory get a half cent under the market?—A. If they asked for it; yes.

Q. And the small dealer paid the full market?—A. Well, if he was a very small dealer, of course we would not be justified in giving him a contract. He would not buy enough.

Q. In other words, the large dealers got theirs half a cent under the market and the small dealers paid the full market; is that correct?—A. No; not all the large dealers; no, they did not.

8581 Q. What large dealers?—A. A few of them.

Q. Those that were buying of somebody else?—A. Not necessarily.

Q. Well, not necessarily, but usually, was it not?—A. I don't know that that is so.

Q. Then did you give it to all large dealers?—A. I can not say that we did give it to all large dealers.

Q. Well, what large dealers?—A. Why, some of them.

Q. Those who were buying from somebody else?—A. Not necessarily.

Q. Well, were they buying of somebody else, whether necessarily buying or not?—A. Why, some of them were and some of them were not.

Q. Yes; that is what I thought. Now, Mr. Trann, you have been writing some letters, haven't you?—A. Why, I don't know; I presume I have.

Q. You presume you have. Did you write that letter [handing witness a paper]?—A. I may have dictated that letter. I did not sign it, sure.

Q. Well, did it go out of your office?—A. Yes; that letter went out of our office.

Q. Under your name?—A. Yes, sir.

Q. Who was S. A.?—A. I don't know who S. A. was.

Mr. DURAND. Special agent.

WITNESS. I had no one by that name.

Q. What does that mean? It means special agent, doesn't it?—A. It may mean special agent.

Q. J. L. Trann, special agent?—A. Yes, sir.

8582 Q. That is your name?—A. Yes; that is my name, but that is not my signature.

Q. Is that the signature of any of your employees?—A. I don't know whose signature it is. I don't know who did the writing.

Q. You don't know whose signature that is?—A. I don't know the handwriting. It looks very much like a girl's writing.

Q. Like the stenographer?—A. It might be.

Q. In your office?—A. It might be.

Q. What is your opinion about it—that you wrote that letter?—A. I can not recall it.

Q. You can not recall writing it?—A. No.

Q. Do you say you did not write it or did?—A. I may have written it; I can not say. It is not over my signature, you see, and I can not say.

Q. Yes; it is over your signature, too.—A. It is not; I beg your pardon.

Q. "J. L. Trann."

Mr. CRAWFORD. His name, but not his signature.

WITNESS. That is my name; it is not my signature.

Q. Is it the signature of your stenographer?—A. I can't tell you whether it is or not; there are no initials there.

Q. Are you familiar——A. There are no initials there to tell who signed it.

Q. Are you familiar with the signature of your stenographer?—A. What date is that, please?

8583 Q. August 19, 1904.—A. No; I am not. I have had two or three stenographers in the course of that time.

Q. What does this "Dictated JLT" mean?—A. That means that my stenographer—if she would write a letter during my absence or a letter of that kind—she probably would put that on the corner of it.

Q. Wherever you dictated a letter "Dictated by J. L. T." was put on the corner, was it not?—A. Yes; that is true; that is right.

Q. Now, who was your stenographer in 1904?—A. I believe Miss Splitzstacer. She was a German girl.

Q. What was her first name?—A. That I can't tell you, sir; I can't remember now.

Q. Is she working for you yet?—A. No; she is not.

Q. Does she live in Peoria?—A. Yes; she lives in Peoria.

Q. Do you know whether she signed that?—A. I can't tell; I don't know whose handwriting that is.

Q. You never saw a signature like that before in your life?—A. I can not say that I have. I can not remember her handwriting.

Mr. CRAWFORD. The fact is that you can not identify that letter?

WITNESS. I can not.

Mr. KELLOGG. Let him testify. You can go on the stand when he gets through.

WITNESS. That letter could be dictated in my office—sent out from my office by anybody.

Mr. CRAWFORD. Well, that does not make it competent.

8584 The letter was marked Petitioner's Exhibit 907.

Mr. KELLOGG. I offer this in evidence.

Mr. CRAWFORD. I object to it as not properly proved.

Q. I notice in this letter——

Mr. CRAWFORD. I withdraw my objection to that.

Mr. KELLOGG. Oh, do you? All right.

Q. I notice in this letter, "This low price of Elaine oil was given us to compete with National Light, and was to be used only where it was absolutely necessary, where the party was buying from the competitor, and by making this price on Elaine we could get the business." Did you write that?—A. I don't remember.

Q. You don't remember that?—A. No.

Q. Did you do that?—A. I can't remember of ever doing that either. Probably we did, though. We might have done it. We were in the oil business, you know.

Q. Then it is true that you did reduce the price to get business away from your competitors, is it?—A. I have told you that; yes; in the way of making contracts. I have told you that and have testified to it.

Q. And you did not reduce it to anybody else, did you?—A. Not that I can recall, without it was in a contract form.

Mr. CRAWFORD. What was the fact about your competitor's price, if you made that reduction?

Mr. KELLOGG. Wait a minute until I get through. I am not through with this man yet.

Mr. CRAWFORD. Answer that question.

Mr. KELLOGG. No; he will not answer it until I get through with him.

8585 Q. Now, Mr. Trann, I show you another letter. Did that go out of your office [handing paper to witness]?—A. Why, it is on our paper, but I don't believe it ever went out of our office. That could be written by any person, you know, downtown, at their homes, or any place. It is not signed by anybody, and lots of people have our stationery outside.

Q. Who is J. R. C.?—A. He may be—he is—we have an employee whose initials are J. R. C.

Q. Who is he?—A. J. R. Coleman.

Q. What is he doing?—A. He is my assistant now. I think he was a clerk then, filling a minor position.

Q. A clerk in 1904?—A. Yes, sir.

Q. Working for you, was he?—A. Yes; he was under me.

Q. Did he write letters?—A. Not that I know of, at that time.

Q. Was he a stenographer?—A. No, sir; he was not. He probably wrote some letters, too, at that time.

Q. He probably did write some letters?—A. Yes; he probably did, although his business would not demand very much writing.

Q. Well, he wrote some letters in the due course of his business?—A. He probably did write a few letters.

Q. I notice a number of letters here signed "J. L. Trann, S. A., per J." or "J. C." Look at those signatures, signed in typewriter, and then after it "per J." or "J. C." [handing witness letter].—A. Well, those letters could be written, you know, by anybody.

Q. I have not asked you whom they could be written by. I ask you whom they were written by?—A. I don't know.

8586 Q. Have you ever seen such a signature going out of your office as that?—A. "J. C.," no, sir; I have not.

Q. Never saw any letters going out of your office signed in that way?—A. No. There might have been, now, at that time. I can not remember.

Q. That is what I am asking you about—that time; not to-day.—A. I can't remember. I was quite new in the business in 1904. That

letter does not look to me as if going through the regular channel in our office.

Q. We will see about that.—A. Written by a typewriter and the name signed by the typewriter.

Papers were marked "Petitioner's Exhibits 908 to 911, inclusive."

Mr. KELLOGG. The letters I refer to are marked 908, 909, 910, and 911.

Mr. CRAWFORD. Please let me look at them.

Mr. KELLOGG. When I get them identified; certainly.

Mr. CRAWFORD. Then you have not offered them yet?

Mr. KELLOGG. Not yet; no, sir.

Q. Those letters, I see, are written on Standard Oil Company paper. Did you have such stationery in your office?—A. Yes; I believe we did at that time.

Q. You did at that time?—A. I believe we did.

Q. This stationery is marked with a form number on it, I notice. Is that correct? Was that your form number?—A. I never noticed the form number.

Q. You never did?—A. No, sir; I never did.

Q. But you had such paper as that at that time, had you?—

8587 A. My recollection is that that kind of paper was there when I went there, but I never noticed that form number.

Q. Now, you say you have no recollection of ever seeing letters go out of your office at that time, in 1904, signed in that way?—A. No; I can't remember seeing any letters signed "J. C."

Q. Well, "per J.," then?—A. No; nor "J."

Q. "J. R. C.?"—A. "J. R. C.;" I used to see letters signed—or the initials signed "J. R. C."

Q. That is, signed in typewriter, and then after it "J. R. C.?"—A. Recently—not those; not back in 1904. I can not recall who "J. C." was.

Q. Well, let me see. You wrote letters to Mr. Hibbs, did you?—A. I presume I did; yes, sir.

Q. You recollect doing so?—A. No; I can't remember any particular letter. I must have written to him, though.

Q. What was Form 114?—A. I don't recall.

Q. For competitive shipments?—A. I don't recall what Form 114 is. If I would see it I would probably recognize it, if it is a form that we use.

Mr. KELLOGG. I offer these letters in evidence.

Mr. CRAWFORD. Let me see them.

The EXAMINER. Are you about through with this witness?

Mr. KELLOGG. No; not quite.

Mr. CRAWFORD. These are objected to on the ground that the alleged letters have not been in any way identified or proved, the witness having disclaimed any knowledge whatsoever as to them,

8588 or the alleged signature, and otherwise, so that they stand without a scintilla of proof to support them at the present time.

An adjournment was here taken until the morning of Thursday, September 10, 1908, at 10.30 o'clock.

8589 ROOM 715, CUSTOM-HOUSE, NEW YORK CITY,
Thursday, September 10, 1908, 10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present on behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison, Mr. J. Harwood Graves.

On behalf of the defendants, Mr. Moritz Rosenthal, Mr. F. L. Crawford, Mr. Douglas Campbell, Mr. W. Cleveland Runyun.

J. L. TRANN recalled:

Mr. CRAWFORD. The alleged letters offered by petitioner at the close of the last hearing are further objected to as being incompetent, and in no way binding upon the defendants.

Cross-examination resumed by Mr. KELLOGG:

Q. Mr. Trann, I show you petitioner's Exhibit 908. Please read that and see if you remember the transaction, and if you can say whether that letter was written in your office and sent out to your agents (witness reads the letter).—A. I don't know whether it was or not. It is not signed by anybody in our office.

Q. How do you know it is not?—A. Why, the signature is printed with a typewriter.

Q. Yes, but how do you know it was not printed in your office?—A. It might have been, but I don't know that it was.

8590 Q. Were not letters frequently sent in that way which went out of your office?—A. Sometimes they were, probably.

Q. I don't want to know probably, I want to know whether they were or not?—A. There might have been a few letters that went out.

Q. Well, were there?—A. I believe there were.

Q. Now, that letter has evidently been copied, has it not, in some book?—A. I can not tell.

Q. Do you keep copies of your letters?—A. No, we do not.

Q. You do not?—A. No.

Q. Never did?—A. Yes, we did, years ago.

Q. At this time, in 1904, did you keep letterpress copies?—A. I can not say as to that. I believe we did, but I can not say positively.

Q. Did you keep copies of your circulars that you sent out?—A. Circular letters?

Q. Yes, like this, addressed to the refined oil salesmen?—A. I believe we did.

Q. At that time, in 1904, you kept such copies, did you?—A. I can not say that we did. I believe we did, but I am not positive. I can not remember details back in 1904 such as that, because I can not say that that letter ever went out of our office. I can not say positively that it did. It might have been written in Springfield, or Bloomington, or a dozen of other points, because there is no signature there.

Q. Did you have any instructions from the home office about
8591 this subject mentioned in this letter, Exhibit 908?—A. I can not say that I did. I can not remember.

Q. Now, I show you Exhibit 909. I see that is indicated "J. R. C." on the side. J. R. C. was your clerk, was he, at that time?—A. That is not signed by J. R. C.

Q. I did not ask you that. I asked you if the initials J. R. C. in typewriter were not on the side?—A. We had a clerk by that name.

Q. Was it not customary for the stenographer to put the initials of the party who wrote the letter upon the letter?—A. Possibly it was.

Q. Well, was it?—A. I believe it is at the present time.

Q. Then, why don't you say so?—A. Well, it might not be in that case, though. How do I know? That letter was not signed by anybody.

Q. It was customary, was it not?—A. I believe it is customary, but I can not say anything about that letter, because it is not signed by anybody.

Q. It has your name attached to it, has it not?—A. Written with a typewriter. Anybody can do that.

Q. Anybody can do that?—A. Any typewriter can.

Q. It is on your form of letterhead, isn't it?—A. We used that stationery.

Q. Do you remember calling the attention of Mr. Hibbs, as one of the salesmen, to the fact about reporting outside shipments promptly on form 114?—A. No; I have no recollection of it.

Q. What was form 114?—A. I can not tell you. If you would show me the form I could probably tell you whether I had ever seen it or not.

8592 Q. What kind of forms did you have for reporting competitive shipments?—A. No particular form.

Q. Didn't you have regular blank forms in your office?—A. We have a great many forms. I can not tell you what form you are referring to. If you will show me the form I will tell you whether we were using it or not.

Q. Didn't you have a form——A. We have a great many forms.

Q. Will you wait until I get through my question?—A. Certainly.

Q. Did you have a form for reporting the shipments of your competitors, showing the consignor and consignee, the number of barrels or cars shipped, the place from which it was shipped, and to whom it was shipped, and other information?—A. If we have, I never have anything to do with it.

Q. You succeeded Mr. Lashley, didn't you?—A. Yes; I succeeded Mr. Lashley.

Q. He said you had such forms?—A. I believe they have, but I have nothing to do with them.

Q. You have nothing to do with them?—A. No; a little detail like that, I would not have anything to do with it.

Q. That is a little detail, is it?—A. I think so.

Q. Did you see any such forms in your office?—A. No; I have not seen them.

Q. You have not seen any such forms in your office?—A. No; not to my knowledge.

Q. What do you use for reporting shipments of competitors?—A. I do not report any.

8593 Q. You do not report any?—A. No.

Q. When did you commence there?—A. Commence what?

Q. Your present position.—A. January 24, 1904.

Q. Haven't you reported any competitive shipments since you have been there?—A. Not on any forms; I have not.

Q. Have you on any pieces of paper?—A. Not that I can recall.

Q. To what office do you make such reports?

Mr. ROSENTHAL. I object to that.

A. I don't know that I make any reports.

Mr. ROSENTHAL. Wait a minute.

Q. Have you made any reports?

Mr. ROSENTHAL. Wait a minute. Now, when I make an objection, be good enough to stop. I object to the last question because it assumes that he has already made reports. The witness has said that he did not make any. Do not get to going so fast that you can not stop.

Q. You never had anything to do about reports of competitive shipments?—A. I do not really understand your question, I don't believe. What do you mean in regard to competitive shipments; where would I report—what do you mean?

Q. You do not know what a competitive shipment is?—A. Yes, I know what a competitive shipment is.

Q. Well, what is it?—A. Why, it is a competitor making a shipment into any town where we are doing business.

Q. Yes, sir.—A. Yes.

Q. Now, did you report any such shipments?—A. Why, I can't remember that I did.

8594 Q. Can you remember that you did not?—A. I can't remember at all.

Q. You do not know anything about it?—A. It is something I do not recall or remember.

Q. Did you notify your agents of shipments being made into their territory?—A. I undoubtedly would, probably, if I got the information; yes.

Q. Did you?—A. Probably I did. I can not recall that I did.

Q. You have no recollection of ever having reported?—A. No recollection; no. I may have done it, but I can not remember it.

Q. Now, I show you a letter, Exhibit 911, to E. L. Hibbs, salesman, calling his attention to a large number of competitive shipments into his territory. Did you send out such letters as that?

Mr. CRAWFORD. The form of the question is objected to.

A. I never sent out that letter.

Q. You never sent out that letter?

Mr. CRAWFORD. Wait, Mr. Kellogg, until I get my objection on the record. The form of the question is objected to, because it assumes that the exhibit is a letter, whereas it has not yet been proved that it is such, or that it was ever signed or sent out by anybody.

Mr. KELLOGG. All right. Now I will stipulate that that objection can be entered after every question, if you want, if you will just give me a chance to examine this witness.

Mr. CRAWFORD. I will make my own objection.

8595 Q. Did you send out any such letters as that?—A. I did not send out that letter.

Q. Do you swear that it did not go from your office?—A. I can not swear that it did not or that it did. It could have gone from my office, or from Springfield, or Kalamazoo, Michigan.

Q. Who would send it from Springfield?—A. How do I know? It is written by a typewriter. Anybody can write it.

Q. All of your letters are written by a typewriter, are they not?—A. Yes; but they are signed by somebody in the office.

Q. Are all of them signed by the party named in them?

Mr. ROSENTHAL. Haven't you gone all over that?

WITNESS. Why, of course they are, most of them.

Q. Do you ever sign on a typewriter letters going out of your office?—A. No, sir; we do not.

Q. Never such a letter went out of your office?—A. There might have been letters of that kind. I can not say it was done.

Q. I am talking about 1904.—A. There may have been.

Q. Do you know whether there were or not?—A. I don't know.

Q. Were there?—A. I don't know.

Q. Do you know there were not?—A. I don't know.

Q. What is your recollection about it?—A. I can't remember anything about it. I have not—my mind is on something else now. I am not looking back at 1904, you know, to little details like that.

Q. You have been testifying——A. I know I have.

8596 Q. About 1904, haven't you?—A. I am not taxing my memory, whether we were doing that, sending out letters like that right along at that time.

Q. Didn't you have at that time letters sent out every stated period, say, of a week or two, or once a month, to your salesmen generally, calling their attention to competitive shipments into their territory?—A. I can not remember—can not recall that.

Q. You do not recall any such thing at all?—A. Can not remember. Possibly we did and possibly we did not. I can not recall that positively. It is impossible.

Q. Have you any recollection of ever having done any such thing in your office?—A. I have not myself. It may have been done by some clerk, but I do not—I can not remember, I can not recall.

Q. Have you any recollection of your clerks under you doing such things?—A. I have just said that I have not.

Q. Then you have no recollection that any letters or circulars were ever sent out of your office, either by you or your clerks, calling the attention of salesmen to competitive shipments?—A. Nothing further than what you have shown me there. That is all that I know. I have no recollection of seeing those letters going out of our office, or any similar letters. They never went out by me, and I can not—I could not swear whether they ever did go out or not. That is a letter that could be got up by those people that are giving you this information, very handy.

8597 Q. Is that all you have got to say on the subject?—A. That is all, I think.

Q. You have no recollection of your own on the subject at all?—A. That is what I said.

Q. Did you ever have any conversation with your clerks about sending out any such letters?—A. No; I don't think I have.

Q. Who was F. H. B.?—A. Possibly some clerk that was with us at that time.

Q. Did you have a clerk whose initials were F. H. B.?—A. I believe we did; yes.

Q. Who was he?—A. F. H. Bush.

Q. Why did you say "possibly," then? Don't you know you did have such a clerk?—A. I said at that time. We have not got anybody——

Q. Did you at that time?—A. Yes; we had at that time a clerk with those initials.

Q. Why didn't you say so?—A. Because I was thinking whether we had more than one or not.

Q. Did you have more than one?—A. I don't know.

Q. Then you did have such a clerk on December 29, 1904?—A. It would appear from that, and to the best of my recollection we did.

Q. F. H.—what was his name?—A. Bush.

Q. F. H. Bush?—A. Yes, sir.

Q. Was he in the habit of dictating letters in your office?—A. Oh, yes; he could dictate letters.

Q. Signing your name to them, per his name?—A. Yes; he had authority to sign my name.

Q. I show you a letter, marked "Petitioner's Exhibit 912,"

8598 signed "J. L. Trann, S. A., per F. H. B." Are you familiar with that signature?—A. That is not signed "J. L. Trann." It is written in with a typewriter, and those, I believe, are Mr. Bush's initials, to the best of my recollection.

Q. Signed by him?

Mr. ROSENTHAL. That is Exhibit 912?

Q. You recognize that as his initials?—A. I believe it is; yes. It is a long time—it has been four years since I have seen his initials.

Q. He was in the habit of signing letters that way, was he?—A. Yes; he did sign letters that way from time to time.

Mr. KELLOGG. I offer Exhibit 912 in evidence.

Mr. ROSENTHAL. I object, because it is immaterial.

Q. Now, this letter says: "Referring to your report of the 19th in regard to the situation at Brimfield, we took this matter up with Mr. Collings and have his authority, under date of the 27th, to close contract with Cady Bros., Memler Bros., and Winn, covering their requirements on Perfection oil, from tank wagon, until April 1st, 1905, at ½¢ off our regular Brimfield market, they to send their tickets in at the end of each month. Make this as a verbal agreement, and have it clearly and distinctly understood that it expires April 1st, and is in consideration of their giving us all their business." Why were they to send in their tickets at the end of each month?—A. Well, I don't know at all.

Q. You don't know anything about it?—A. No.

Q. Never heard of the transaction?—A. That was undoubt-
8599 edly similar to contracts that we were making, probably, at that time, half a cent lower than the market, whatever it was.

Q. They received tank-wagon tickets, didn't they, when they bought their oil?—A. I presume they did.

Q. Giving the full price?—A. Probably they did. I can't tell anything about that.

Q. And they sent the tank-wagon tickets in at the end of the month to get their rebate, didn't they?—A. They probably did.

Q. Is not that what that means?—A. Probably it is.

Q. That was customary, was it not?—A. It was done in a few cases, and is done yet in cases on contract, where——

Q. It was done in cases where you had contracts to sell these men at less than the regular established rate?—A. If we made a contract with a dealer, if he was large enough to justify us in making a contract, of course we would make a contract with him, and give him half a cent below the market.

Q. And you would give him that in the form of a rebate at the end of the month?—A. It might be handled that way in some cases, and in some cases it might have been handled differently.

Q. How was it handled usually?—A. I can not recall the particular case.

Q. Were Cady Brothers large dealers?—A. Yes; they are large dealers.

Q. Are Memler Brothers large dealers?—A. Those three you have mentioned are quite large dealers.

8600 Q. How big a place is Brimfield?—A. It has about a couple of thousand, I guess; somewhere along there.

Q. They were retail merchants, were they not?—A. Yes.

Q. They were not large dealers?—A. Oh, they were not wholesalers.

Q. Simply retailers?—A. Large retail merchants.

Q. Now, you gave those rebates to anybody where you could cut into anybody else's price, didn't you?—A. Oh, no; we did not.

Q. Now, Mr. Trann, I think you said that you had no recollection of Exhibit 907 or of the transaction therein referred to, and did not

know the signature to that letter. Is that true?—A. Yes; that is what I said. That letter went out—that letter would appear to me as if it went out of our office—my office there; but it is not my signature and I will not—I could not swear as to the signature. As I stated yesterday, I thought it was the stenographer's writing.

Papers marked "Petitioner's Exhibits 913 and 914."

Q. I show you Exhibits 913 and 914. Did you write those letters?—A. (After reading the letters.) Yes; I wrote those letters.

Q. That is your signature, is it?—A. That is my signature.

Mr. KELLOGG. Now, I offer in evidence Petitioner's Exhibits 913 and 914.

Mr. CRAWFORD. They are objected to as immaterial.

Q. What is Perfection oil?—A. Water white kerosene oil.

Q. Is it the common grade or the highest grade?—A. Why, it is not a common grade. It is a good grade of oil.

Q. Is it the highest grade?—A. Why, no; there is a higher grade.

8601 Q. Is it the common grade of Water White?—A. It is not a common grade of Water White; it is not a Prime White oil. It is a Water White oil.

Q. Is it the ordinary grade of Water White oil?—A. Yes, a good grade of Water White oil.

Q. What is Eocene?—A. It is a good grade of Water White oil.

Q. A good grade of Water White oil?—A. It is not a high grade; no.

Q. Then Mr. Lashley does not know what he is talking about?—A. Oh, yes, he does. It is a little better grade than Perfection.

Q. It is a little better grade than Perfection?—A. Yes; it is a Water White oil.

Q. How much more does Eocene sell for than Perfection?—A. Usually a cent a gallon.

Q. Usually a cent a gallon?—A. Yes.

Q. Sometimes two cents?—A. No; never two cents.

Q. Usually one cent?—A. Yes.

Q. You say here "Owing to the amount of Perfection we have in our storage there and at this season of the year, I see no reason why we can not market this as Eocene, and when the storage is empty have it filled with Eocene, which will come in about the right time or before the cold weather." Were you in the habit of doing that sort of thing?—A. No. I made that suggestion in that particular case because I wanted to get that storage empty.

8602 Q. So you were going to sell that to your customers as Eocene oil?—A. I made the suggestion. It does not say that it was sold.

Q. You marked the letter "Personal," didn't you?—A. Oh, I wrote there with a pencil, I see, "Personal," so that he would be sure to read it carefully; yes.

Q. Were you in the habit of making such suggestions as that?—A. No, I don't think I was.

Q. You don't think you were?—A. I made the suggestion in that case. I may have done it in other cases; I don't know. I certainly did there.

Q. In this other letter, Exhibit 913, I notice you say, speaking of Elaine oil, "The price I gave you of 16 cents was a minimum price and supposed to be just used where it was absolutely necessary to get the business." That is, sold to the customers of your competitors—is that what you mean?—A. The letter does not read that way.

Q. Is that what you mean?—A. No, it is not.

Q. That is not what you mean. Well, what did you mean?—A. I mean just what the letter says.

Q. Now, the letter, Exhibit 907, which you say probably went out of your office, and which is on the same subject, and written two days later, says: "This low price on Elaine oil was given us to compete with the National Light, and was to be used only where it was absolutely necessary, where the party was buying from the competitor, and by making this price on Elaine we could get the business." Was that a fact?—A. Is that in the letter?

Q. Yes, that is in the letter.

8603 Mr. CRAWFORD. That is objected to because the witness has not stated, to my knowledge, that that was probably sent from his office. He denied any knowledge of it.

Mr. KELLOGG. No; he did not. He said it was probably sent from his office.

Mr. CRAWFORD. I do not so understand.

Mr. KELLOGG. Turn back and read his testimony and then read the question.

Mr. ROSENTHAL. You are going to insist on the question, anyway, are you not?

Mr. KELLOGG. Yes.

Mr. ROSENTHAL. Then why read the question?

Mr. KELLOGG. Read it, anyway.

The stenographer read as follows: "Q. Now, the letter, Exhibit 907, which you say probably went out of your office, and which is on the same subject and written two days later, says 'This low price on Elaine oil was given us to compete with National Light, and was to be used only where it was absolutely necessary, where the party was buying from the competitor, and by making this price on Elaine we could get the business.' Was that a fact?—A. Is that in the letter?

"Q. Yes; that is in the letter."

Q. There are the two letters.—A. This letter I know nothing about—this one I do.

Q. Didn't you say a few minutes ago that that letter probably went out of your office?—A. I said probably, but now, since I see here the initials, it shows here——

(At this point there was laughter among the Government examiners.)

8604 WITNESS. Well, here—I will explain this thing to you very clearly. I did not notice that at all until this morning.

Mr. CRAWFORD. We will have to object to our friend Durand trying to laugh the witness out of court.

Mr. KELLOGG. Really, this is funny.

WITNESS. This thing has been changed.

Mr. ROSENTHAL. We have no objection to Mr. Durand making every effort to help the Government properly.

Q. This thing has been changed, you think?—A. Probably this letter was doctored up to suit you. Those that I signed I will admit. You need not worry about that.

Q. Now you have changed your mind on that letter, have you?—A. No; I have not. I have just noticed there that that says J. L. T., but there have been some other initials first underneath it.

Q. You did not see that sentence I read from there when you said, a few minutes ago——A. Oh, the sentence cuts no figure when it is not over my signature; I don't care what you show up.

Q. You said a few moments ago that that letter probably went out of your office, didn't you?—A. Probably did; I will say that yet.

Q. Now you deny it, do you?—A. No; I do not.

Q. You think it did?—A. I say it probably went out of our office——

Q. Then I ask you——A. But it probably did not. There is a chance that it did not, don't you see. I am not saying positively.

Q. Which are you going to have it—that it probably did or
8605 probably did not?—A. Just exactly as I said. You can suit yourself.

Q. Referring to the sentence I read to you, is that true, or is it not?—A. I don't know anything about it at all—about the sentence at all. It is not a letter signed by me. I don't know anything about it. I never saw the letter before.

Q. It has your initials in typewriter in the corner, hasn't it?—A. Well, it has been changed there two or three times.

Q. How has it been changed?—A. Has not that letter been changed?

Q. How has that letter been changed?—A. There has been some other letter there first, and then the typewriter came over it. That is the way it looks to me now.

Q. Do you swear that over the J and L another letter has been made?—A. No, but it has over the T.

Q. Isn't that a perfectly plain T?—A. Yes, but isn't there a letter underneath it?

Q. Suppose there is, but isn't it a plain T?—A. It is now, but isn't there another letter underneath it?

Q. Were you in the habit of sending out letters in that way?—A. No, I am not.

Q. You are not?—A. No, I am not.

Q. You never sent out any letter signed by any of your stenographers?—A. Yes, I presume there has been, sometimes.

Q. Do you recognize that signature?—A. The writing?

Q. Yes.—A. I do not.

Q. You do not?—A. I told you yesterday I thought it was probably my stenographer at that time, but I could not swear to it.

8606 Q. Now, did that letter go out of your office, or did it not?—A. I do not know.

Q. Did you, at that time, keep letter-press copies of your letters?—A. I believe we did.

Q. Will you produce the letter-press copy book during the year 1904?—A. Oh, I could not produce any of them now.

Q. Where are they?—A. I presume they are destroyed. We built a new office since that time, and cleaned out all our old stuff.

Q. Were they destroyed, or were they not?—A. I can't tell you. I can tell you when I return to Peoria.

Q. Will you look it up and find out?—A. Yes.

Q. Will you produce it if you have it?—A. I will, on the advice of our attorneys.

Q. You will if your attorney advises you to?—A. Certainly.

Q. You will not if he does not advise you to?—A. How could I? Why should I do things under your advice? [Laughter by Mr. Campbell.]

Mr. ROSENTHAL. Well, we have something now that we can all laugh over.

Q. Your letters at that time were usually copied, were they?—A. To the best of my recollection, they were.

Q. Have you any recollection of having destroyed them?—A. Why, we destroyed a whole lot of old stuff.

Q. When?—A. Now, I don't know when—when we built our new office.

Q. When did you build your new office?—A. 1906, I think it was.

8607 Q. When you built your new office did you destroy all the stuff in your old office?—A. Oh, not all the stuff; of course not.

Q. You moved it over into the new office, didn't you?—A. Why, we moved some stuff over and destroyed some.

Q. Would you destroy your letter books?—A. Very apt to, when we are not using them, I presume: old letter books back five or six years or four or five years.

Q. You would be apt to have a book of 1904, wouldn't you?—A. I am afraid not.

Q. Afraid not?—A. We might, possibly.

Mr. ROSENTHAL. Everybody does not save letters like Kercher and Maxon and Hibbs. They do not have the same reasons to.

Mr. KELLOGG. That is all.

Redirect examination by Mr. CRAWFORD:

Q. I hand you Petitioner's Exhibits 907, 909, and 910. What persons had access to stationery such as that upon which those alleged letters are written?—A. All of our agents were furnished with stationery of this kind, and our salesmen.

Q. Do you mean to say in the Peoria office?—A. Oh, no; in the entire field. If they asked for stationery, it was sent to them.

Q. Where else than in the Peoria office was that stationery used?—A. Springfield, Galesburg, Bloomington, and possibly forty other stations, by station agents at forty other places, possibly.

8608 Q. And in your Peoria office how many persons had access to it?—A. Five or six.

Q. The same stationery was used generally, then, was it, at your substations?—A. Certainly it was.

Q. You spoke about contracts with large dealers for a price a half cent below the market price. Just explain the general provisions which were common to those contracts. I do not mean of any special one, but the general provisions which were common to them all; the time they ran for, the quantity, etc.—A. We would make those contracts with the trade in view of them taking, if it was from tank wagon, a tank-wagon load at a time, at a delivery, amounting to about 400 gallons, the average tank-wagon capacity; or in barrel shipments, if it was at a time of the year when we were not operating the tank wagons or could not, about five-barrel lots.

Q. How long were the contracts made for?—A. The contracts were made for a period of time, for six months or a year.

Q. Either one or the other?—A. Yes.

Q. And was there any minimum requirement per month that the merchant was to take?—A. Yes: that was usually stipulated—always, in fact, stipulated.

Q. What was the lowest amount?—A. About five or six hundred gallons a month, up to two thousand.

Q. Then, these contracts were made so that the merchant bound himself for a space of either six months or a year to take not less than five or six hundred gallons or a larger amount per month, and to take at one time either a tank-wagon load, or, if in barrels, as much

8609 as five barrels?—A. Yes; that was the understanding. It was not always lived up to exactly.

Q. But those in general were the common terms of the contract?—A. Yes; that is right.

Q. And in consideration of those features, the merchant received half a cent under the market?—A. Yes.

Q. Now, in the cases where you made such contracts, after the Royal Oil Company had sold their oil in your territory, what was the fact as to the price which the Royal Oil Company had fixed on its sales before you made the contracts?—A. In every place where they made a sale, went in and made a sale in a town, invariably their price was a half cent below the market we were carrying at that point.

Q. So that when you followed them and made such a contract as you have described, the price that you fixed by the contract was the same price which they had previously paid?—A. Yes, sir; that is right.

Q. In other words, you reduced your price to meet their cut?—A. To meet their price.

Q. And you did not cut your price under theirs?—A. No, sir; we did not. That is true. That covers the situation regarding these contracts.

Mr. CRAWFORD. That is all.

Recross-examination by Mr. KELLOGG:

Q. Do you swear that the Royal Oil Company had sold oil to Cady Brothers at a half cent under this price named by you?—A. I presume they did, or we——

Q. Do you know anything about it?—A. I don't know
8610 positively; no, sir.

Q. Do you know whether they had sold to Mimler Brothers?—A. I don't know.

Q. Or Winn?—A. I don't know.

Q. You don't know that they sold them oil at all, do you?—A. No.

Q. Or if they did sell, you don't know what the price was?—A. I know that we would not have made the contracts with them without they had been giving their business to the other company below our market—we would not have had to make the contract with them. We would not have been compelled to.

Q. You know you made this contract, don't you?—A. It would seem so from that.

Q. And you don't know that they bought a gallon of oil from the other company, do you?—A. I can not tell you that here.

Q. Then you don't know that in every case the Royal Oil Company had undersold you?—A. Possibly not in every case. I know in a great many cases that have been referred to here.

Q. Now, you say the minimum amount of oil that you sold a merchant, or that the merchant was required to take, in order to get this rebate of half a cent, was how much?—A. My recollection is about four or five hundred gallons a month.

Q. Which was it, four hundred or five hundred?—A. Well, between the two. It might be four hundred and might be five hundred—between that range.

Q. I think you said between five and six hundred or two thousand?—A. I said the minimum would be along about four or five hundred and the maximum probably about two thousand,
8611 that is what I testified to.

Q. Then you had as many different minimums as you had customers, had you?—A. No.

Q. Did you have a stated minimum, or didn't you?—A. Why, about four or five hundred—I can not recall it now, what it was. I say either four or five hundred gallons was the minimum. I can not remember now.

Q. You would not sell to any merchant who did not take four or five hundred gallons a month?—A. I don't see how we could, if he did not have the storage for it.

Q. How many merchants were there that you sold to in the town of Brimfield who did not take that amount?

Mr. ROSENTHAL. If any?

WITNESS. I do not know that there were any.

Q. There were mighty few merchants that you sold to who did not take four or five hundred gallons a month, were there?—A. No; I don't know that there were.

Q. What?—A. I can not say.

Q. Your minimum then gave you the opportunity to sell to anybody you pleased at a rebate, did it not, practically?—A. You say so.

Q. Well, is that true or isn't it?—A. I don't know that it is.

Q. You do not think it is? Well, name a merchant to whom you sold less than four hundred gallons a month?—A. I can not recall any now.

Q. Were there any?—A. I can not say that there were.

Mr. KELLOGG. That is all.

8612 Redirect examination by Mr. CRAWFORD:

Q. You testified yesterday that you made these contracts for half a cent under the market, with large customers, not merely in cases where competitors had sold them, but also in other cases. You do not intend to change that now, do you, by anything you have said?—A. No; we have made contracts with others, more I presume with dealers that were not buying from competitors than with the competitors.

Q. And you did it as an inducement to have them make large purchases?—A. Yes, certainly.

Q. In the instances where you made these contracts, after competitors had sold to these people, what was the fact as to the prices of the competitors?—A. We were meeting the competitors' price by making our contract. Of course, we were half a cent above them on our regular market. Of course, we did not get all the business. They often cut a cent below us, in some cases, so that we did not get all the business.

Q. In other words, you did not use these contracts for the purpose of cutting a competitor's price, that is, by going under the competitor's price?—A. Not in a single case that I can recall.

By Mr. KELLOGG:

Q. Do you know whether you did or not?—A. I said not in one single case that I can remember.

Q. There may have been a great many cases that you do not now remember.—A. I did not say so.

Q. Were there, or were there not?—A. I said no.

8613 Q. Do you swear positively that you never——A. I said to the best of my recollection. I can not remember.

Q. Do you swear that you never did?—A. I say I can not remember of ever doing it.

By Mr. CRAWFORD:

Q. You do not remember that you ever did anything of the sort, do you?—A. No.

Q. And your custom was as you have testified?—A. Certainly.

8614 C. H. HAND, called on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. ROSENTHAL:

Q. Your full name, please?—A. C. H. Hand.

Q. Where do you live?—A. In Cincinnati, Ohio.

Q. How long have you lived there?—A. Since January, 1901.

Q. Where was your home before that?—A. Elizabeth, New Jersey.

Q. What is your occupation?—A. I am general manager of the Standard Oil Company of Kentucky.

Q. With headquarters where?—A. At Covington, Kentucky.

Q. The principal offices of the Standard of Kentucky are located at Covington, are they?—A. Yes, sir.

Q. Have you a large office force there?—A. Yes: I would consider it as a large office force.

Q. About how many people are employed in your offices there at Covington, some hundreds?—A. Yes; approximately 175 to 200 people.

Q. All engaged in office work?—A. Yes, sir.

Q. How many stenographers have you there? Have you any idea?—A. I couldn't tell you.

Q. Half a dozen or more?—A. More.

Q. Twenty?—A. Yes; I should say twenty.

Q. How long have you been general manager of the Standard Oil Company of Kentucky?—A. Since July 1, 1903.

8615 Q. Will you tell us in a general way what your duties are as general manager?—A. They are to exercise a general supervision over the equipment and the organization in the field other than the accounting organization.

Q. Are the salesmen in the field under your general management?—A. I do not direct their movements.

Q. Who is your immediate superior?—A. Mr. C. T. Collings.

Q. You have charge of the whole field of the Standard of Kentucky?—A. I have charge of that portion of the business that I have just described in the whole field of the Standard Oil Company of Kentucky.

Q. Over its entire field?—A. Yes, sir.

Q. In your occupancy of that position do you come in contact with the matter of prices?—A. Not at all.

Q. I don't mean with the making of prices, but with the prices at which your product is sold.—A. Very seldom.

Q. That is not part of your present duty?—A. No, sir.

Q. What was your position immediately preceding the present position that you hold?—A. I was manager of the lubricating department.

Q. And your duties there were what?—A. The merchandising of lubricating oils.

Q. There you had to do with the complete merchandising end of the proposition?—A. Of the lubricating oils.

Q. Yes, sir; that is what I mean; with respect to lubricating oils.—A. Yes, sir.

Q. How long were you manager of the lubricating department?—A. I can't recall. It was from the fall of 1901, either
8616 September or October, until the time I was appointed general manager.

Q. And your headquarters were where?—A. Cincinnati, Ohio.

Q. Did your duties take you to Illinois?—A. Yes, sir.

Q. You were the general manager of the lubricating department in the Illinois field so far as it was covered by the Standard Oil Company of Kentucky?—A. Yes, sir.

Q. Do you know a man by the name of F. L. Hibbs?—A. I was acquainted with that man; yes, sir.

Q. Do you also know a man by the name of A. C. Annett?—A. I had a similar acquaintance with Mr. Annett.

Q. What was their business?—A. Mr. Hibbs, the last I knew of him, while in our employ, was a refined-oil salesman.

Q. And Mr. Annett?—A. Mr. Annett was a lubricating-oil salesman.

Q. So that Annett was under your charge?—A. For a time; yes, sir.

Q. Do you know the Creve Coeur Club, at Peoria, Illinois?—A. Yes, sir.

Q. Do you remember giving a dinner, in February, 1904, at that club, to your salesmen?—A. I do not.

Q. Do you remember being present at a luncheon or dinner given at that club to Standard Oil employees in February, 1904?—A. I don't recall that it was in February, 1904.

Q. Well, do you remember being present at any time?—A. I do; to the best of my recollection it was January 24, 1904.

8617 Q. Is that the only luncheon or dinner where you were ever present at that club in Peoria, participated in by a number of salesmen of the Standard Oil Company?—A. To the best of my knowledge, yes.

Q. And is it the only one where Hibbs and Annett were present with you?—A. I am not positive that Mr. Hibbs and Mr. Annett were present at the luncheon to which you refer.

Q. Were you ever present at any general luncheon or dinner given to the Standard Oil salesmen when Hibbs and Annett were present?—A. I don't recall of any.

Q. What do you say as to whether, at the time you were present at this club dinner or club luncheon, you told of a certain salesman by the name of Robert Carlisle who had been furnished with money by you for the purpose of effecting a contamination of some of your competitors' oil?—A. I made no such statement whatever.

Q. Did you make a statement anything like that, or that could possibly be construed into meaning that?—A. I don't recall, but it was my custom to take the advantage afforded by meetings of salesmen to always impress upon them the desirability of the company

that they should not use unfair means of any description in their efforts to obtain business.

Q. My question is now whether you, either at that time or at any other time, told of an occurrence at which Robert Carlisle, one of your salesmen, had been furnished with money to effect such a contamination of your competitors' oil. Yes or no?—A. No.

8618 Q. Did you ever furnish Robert Carlisle, or any other salesman of the Standard Oil Company, with money for any such purpose?—A. Never.

Q. Did you furnish Carlisle any money whatever for the purpose of recovering the business of the Kokomo Steel and Wire Company?—A. I did not.

Q. Do you have any can-peddling departments under your charge?—A. Yes, sir.

Q. Where?—A. Indianapolis; Cincinnati; Louisville, Kentucky; New Orleans, Louisiana.

Q. What do you mean by can-peddling department?—A. The business was done in one-gallon cans. These were patented cans that could not be filled except through the use of a filling machine; the business was done with one-horse wagons, delivering direct to the consumers.

Q. And delivering these one-gallon cans which were so filled by this patent filler?—A. Yes, sir.

Q. From these delivery wagons?—A. Yes.

Q. What was the purpose of that, or the advantage of it?—A. The advantage to the consumer?

Q. Yes.—A. It was that he always got a full gallon; there was no opportunity for the oil to become contaminated, as was sometimes the case when taken from a grocer's tank, which tanks were often left in exposed places. Then, further, there was the advantage of delivery right to the residence at stated times.

Q. And these cans, after the oil had been consumed, would be returned to the company?—A. Yes, sir.

8619 Q. For the purpose of refilling?—A. Yes, sir. The driver would pick them up upon delivering the second can.

Q. The can-peddling prices compared how with your tank-wagon prices?—A. As a rule, the can-peddling prices, as I recall, ranged about 2 cents per gallon above the tank-wagon prices.

Q. 2 or 3 cents?—A. I don't recall of any case where it was 3 cents.

Q. That is, your price to the consumer through these can peddlers was about 2 cents higher than your price to the retailer of oil purchased from your tank wagons?—A. Yes, sir.

Q. Giving the retailer who purchased from your tank wagon that margin of profit in competition with your can-peddling business?—A. Yes, sir.

Cross-examination by Mr. KELLOGG:

Q. When did you say you commenced as general manager?—A. July 1, 1903.

Q. What were your duties before that?—A. I was manager of the lubricating department from the fall of 1901 until that time.

Q. Prior to that time what were your duties?—A. I was a subordinate in the lubricating office at Cincinnati.

Q. Under Mr. Stanley?—A. I w

Q. Mr. Stanley's assistant. Mr. Stanley was your superior officer prior to January, 1901?—A. No, sir.

8620 Q. When was he your superior officer?—A. He was my superior officer from January, 1901, until the time he resigned.

Q. When did he resign?—A. I do not remember.

Q. After he resigned, who was your superior officer?—A. Mr. C. T. Collings.

Q. Where were you in 1900?—A. What do you mean?

Q. Where were you in 1900—that is what I mean.—A. I was in a great many places in 1900, sir.

Q. In what position?—A. I was in the office of Mr. Silas H. Payne, 26 Broadway, New York.

Q. You were not in the Cincinnati office in 1900 at all?—A. I was not.

Q. During any part of that year?—A. No, sir.

Q. When did you commence in the Cincinnati office?—A. January, 1901.

Q. Was Mr. Stanley always at Cincinnati?—A. He was.

Q. You were in the office of Mr. Silas H. Payne, did you say?—A. Yes, sir.

Q. At 26 Broadway?—A. Yes, sir.

Q. What was Mr. Payne's department?—A. Lubricating department.

Q. Are you positive it was not 1900 that you commenced in Cincinnati?—A. I have testified to the fact that I went to Cincinnati in 1901, and was not there during 1900.

Q. I am aware of what you testified. I asked you if you were positive of that?—A. I wouldn't testify to it unless I was.

8621 C. T. COLLINGS, recalled for further cross-examination, testified as follows:

By Mr. KELLOGG:

Q. I understood you to testify, Mr. Collings, that in 1898 the price of refined oil from tank wagons—Fire Proof oil—at Atlanta, was 9 cents and the highest was 9½ during that year, and that corresponded with an advance in the price of crude of half a cent.

Mr. CAMPBELL. What year is that?

Mr. KELLOGG. 1898, page 8333, of his testimony.

Q. Did you testify to that?—A. The price was 9, you say, tank-wagon price?

Q. 9 cents, and the highest was 9½ during the year.—A. (After referring to memorandum.) That is correct.

Q. Let me see your memorandum that you are testifying from, will you?

[Witness hands sheet of paper to Mr. Kellogg.]

Q. This memorandum only shows prices for two days, March 3 and May 2; isn't that right?—A. That is right. The presumption is that the remainder of the year the price remained 9½.

Q. Then, you are just testifying from presumption?—A. Of course I told them to give me all the changes in prices for that year.

Q. You don't know that this covers all the changes?—A. If my people failed to give me the remainder, they did not comply with my instruction. I didn't check it up against the record myself personally, but I rely on my people when they give me information to give it to me correctly.

8622 Q. Where did you get this?—A. I got it from our office at 26 Broadway, Mr. Westcott's office.

Q. They keep the prices for all stations, all places, don't they?—A. Mr. Westcott's office keeps a record of all prices in the Kentucky field.

Q. How far back?—A. Oh, I suppose they have got them back to—well, I don't know—back of 1900, you know, because I didn't have charge.

Q. They have got them here, I see, January 5, 1897.—A. 1897. Well, I have no doubt they have got them back of that.

Q. You have no doubt they have got them back of that?—A. Yes.

Q. Have you seen them?—A. No; I haven't seen them.

Q. You got this from Mr. Westcott?—A. I did.

Mr. ROSENTHAL. From his office?

WITNESS. From his office; yes.

Q. These salesmen in the local places, like Atlanta, always give a tank-wagon ticket when they deliver oil, don't they?—A. You mean the tank-wagon drivers?

Q. Yes, sir.—A. Yes.

Q. And that tank-wagon ticket given to the tank-wagon driver is signed by the driver and shows the price of oil?—A. It should; yes, sir.

Q. That is your custom in your business?—A. That is correct, sir.

Q. Now, I ask you if it is not a fact that in 1898 the price of oil went from 8 cents, in January and February, to 11 cents

8623 in November and December?—A. In 1898?

Q. Yes, sir; 1898.

Mr. ROSENTHAL. Give him back his memorandum.

[The paper was returned to the witness.]

A. If it is not on that memorandum, it did not, because this is a record of our prices.

Mr. ROSENTHAL. That is, you base it upon the information furnished you by Mr. Westcott's office?

WITNESS. Yes; it is based upon the information furnished me by Mr. Westcott's office. I say that it did not.

Q. Do you know that the paper you have contains all the prices for every month in that year?—A. I couldn't testify to that unless I personally checked it up against the record, the book.

Q. Now, I show you some tank-wagon tickets and ask you if those are the forms of tickets issued by your drivers [handing bunch of tickets to witness]?—A. That is the form.

Q. That is the way they are made out?—A. It is.

Q. Mr. Collings, from the tank-wagon tickets furnished the Government in the city of Atlanta, Georgia, during the year 1898, we are informed that the price of oil was from 8 cents in January and February to 11 cents in November and December. Now, isn't it possible that you are mistaken about that, and that your memorandum does not cover the whole year?—A. This 8-cent price that you have on that ticket might possibly be explained, inasmuch as the first price given is March 3, 1898, 9 cents. Now, that might have been the change. That is the date the price was changed, and it may be that they didn't give me the price.

8624 Q. Now, I am not trying to catch you. I want you to look up and see, Mr. Collings.—A. I understand you perfectly, sir.

Q. Now, you say March—what was that date?—A. March 3. Have you got a ticket there dated in March?

Q. I have a ticket here dated March 3; that is, 3/3/98, 50 gallons of oil marked 9 cents.—A. Well, you see that is the record that appears here, March 3. Evidently that is the day that the advance went into effect, because it shows what he has written there, and then "9" over it, and then it is extended at 9 cents.

Q. Extended at 9 cents; yes.—A. Very likely the driver, from force of habit, had written 8. Probably the price had been 8 cents up to that date.

Q. And you have got the date the change was made, which corresponds with the ticket; is that right?—A. They must have misunderstood me and gave me the dates that the changes were made in 1898.

Mr. CAMPBELL. Didn't Mr. Collings testify that the price on January 1, 1898, was 8 cents?

Mr. KELLOGG. Mr. Collings testified that during the entire year the price was 9 cents, and the highest price was 9½ during that year, page 8333. Now, I simply want Mr. Collings to look up and see if they have given him the changes of prices simply.

Mr. ROSENTHAL. Our statement is that January 1, 1898, the price was 8 cents—our statement of Collings's testimony.

Mr. KELLOGG. Well, I have got the testimony; that is all I have got.

8625 Mr. ROSENTHAL. It may be in some portion of his testimony.

Mr. CAMPBELL. He was rebutting Wootten's testimony that the price went in that year from 6½ to 13 cents.

Mr. KELLOGG. Yes; and if there is any mistake about it he can correct it. Now, I wish you would examine the prices and see if the prices that you haven't got are certain changes of prices.

WITNESS. That may be; that may be the way they understood it.

Q. What is the next price you have?—A. The next change in price is May 2, 9½, and the inference is that that was the last change that year.

Q. Now, I have a tank-wagon ticket here, 5/14/1898, 30 gallons at 9½, which I show you.—A. That shows that was the time that 9½-cent price went into effect.

Q. Have you any other changes during that year?—A. I have not.

Q. Now, I have a tank-wagon ticket 10/14——A. October.

Q. 14th of October, 1898, 10½ cents, which I show you.

Mr. ROSENTHAL. What kind of oil?

Mr. KELLOGG. Fire Proof oil.

WITNESS. Fire Proof oil. 10½, and the extension is correct. That is one of our tickets. See if the date here is right. Yes, the date is all right.

Q. The next change I note is the 21st of October, which I show you, 20 gallons at 11 cents.—A. October 21, 1898, 20 gallons at 11 cents.

8626 Q. Do you think that is one of your tickets, Mr. Collings?—A. Oh, yes; that is one of the tickets.

Mr. KELLOGG. I will show them to Mr. Rosenthal.

WITNESS. I don't understand why they stopped with that May change. I didn't verify this personally, you know.

Mr. KELLOGG. I would like to have you do so.

Mr. ROSENTHAL. You verify these prices.

WITNESS. I will do so.

Mr. ROSENTHAL. Let him take these tickets and verify the prices.

Mr. KELLOGG. I will give you an opportunity to do that.

(A bunch of tickets was given to Mr. Collings for the purpose of verification.)

Q. Now, as I understand, the price in 1897 was 8 cents?—A. Yes; and according to this there was no change that year. You say 1897?

Q. 1897.—A. The price January 5 was 8 cents.

Q. Yes, sir; I think that is correct. And it remained 8 throughout the year?—A. According to this record.

Q. In Atlanta?—A. No change at all.

Q. Now, as I understand you, this price had gone down from about 12½ cents during the year 1895?—A. Yes; the price in 1895—highest—was 12½.

Mr. ROSENTHAL. What was the lowest in 1895?

WITNESS. The lowest in 1895 was, first of January, 8 cents.

Q. Now, these prices, you said—up and down in Atlanta—up to the end of 1899 were regulated or governed by the crude-oil prices?—A. That was the way I figured it out, according to the

8627 movement of crude.

Q. And that that decreased——

Mr. CAMPBELL. Let us see what the testimony was on that.

Mr. KELLOGG. Let me follow the exact testimony, then. I will give you the page. On pages 8330 and 8331 you testified to these prices and said: "Q. Those changes in price that I have indicated as existing at Atlanta, were they general throughout your territory?—A. They were. Q. The movement was up and down in the price of refined oil as the movement was up and down in the price of crude?—A. Yes, sir. The primary markets regulate it. Q. Throughout the entire territory?—A. Yes. The primary markets regulate the prices of our selling." You testified to that, did you?—A. If it is there, I did. That refers to 1898?

Q. In 1898?—A. Yes, sir.

Q. Now, isn't it a fact that the price decreased in Atlanta from 12½ to 8 cents——A. What year?

Q. From 1895 to 1897.—A. Yes.

Q. And did not decrease in the towns surrounding Atlanta?—A. I haven't looked up the prices in the towns, Mr. Kellogg.

Q. Well, did it decrease to any such extent?—A. I don't know. I wouldn't want to testify on that until I looked up the prices.

Q. I ask you if it is not a fact that the prices decreased in Atlanta to 8 cents, as you testified, in 1897, but in Rome, Georgia, remained at 12 cents throughout the entire year of 1897?—A. I haven't any record of Rome.

Q. Let me show you the tank-wagon tickets of Rome,
8628 Georgia, and ask you to examine them. Look them all through carefully [handing witness bunch of tickets].—A. I have no way of telling that this is wrong.

Q. Oh, I will give you ample time to look them up in your office.—A. Very well.

Mr. ROSENTHAL. Check them up.

WITNESS. This is not dated anywhere.

Mr. KELLOGG. No; I simply state that those came from Rome, and I ask you to verify them.

WITNESS. Very well; I will do that. Now, about verifying this ticket, I will have to communicate with the Atlanta office. I have no way of verifying whether that ticket was issued in Rome or not, except from the Rome office.

Q. You can verify the prices in the New York office.—A. Yes; I can verify the prices at Rome, but I couldn't certify that is a ticket from Rome, Georgia, because I don't know.

Q. I don't ask you to do that; but that has every appearance of being one of your tank-wagon tickets, hasn't it?—A. That is one of our tank-wagon tickets; there is no question of that; but whether it was issued at Rome I couldn't say without finding out from the Atlanta office. They would probably have a record of the name of this firm.

Q. Please, then, when you do that, give us the movement of prices in Rome, Georgia, and the other principal towns surrounding Atlanta from 1895 to 1899, the time during which, I believe, you have testified.—A. It is the principal towns, you say, around Rome?

8629 Q. Yes.—A. The price of Fire Proof oil from tank wagons?

Q. Yes. Rome is how far from Atlanta?—A. Oh, I should say it is over 100 miles; 120 miles, or something like that.

Q. North of Atlanta, isn't it?—A. North; yes.

Q. In other words, it is 120 miles nearer Whiting, Indiana, or substantially that, than Atlanta?—A. Yes.

Q. And the freight rate would be the same to both places, wouldn't it?—A. I wouldn't like to guess at that; I would have to look that up.

Q. It wouldn't be any more to Rome, would it?—A. It doesn't always happen that way. It sometimes happens that at a nearby point you have a higher rate than at a more distant point.

Q. I think I can show you the freight rates; they are in evidence in this case.—A. I don't doubt that; I am not disputing that proposition, but I wouldn't like to——

Q. Now, from your tank-wagon tickets furnished the Government from Atlanta and Rome it appears that the price decreased at Atlanta to 8 cents and was 8 cents throughout the year 1897 and two months in 1898, and increased, as we have shown you, to 11 cents the latter part of 1898, but remained at 12 cents at Rome throughout the entire year 1897 and 11½ and 11 cents through the entire year 1898.—A. About how many towns would you want outside of Rome?

Q. Oh, give us five or six towns.—A. Very well.

Q. Five or six of the largest towns in the State of Georgia.—A. Very well.

8630 Q. Perhaps we had better furnish you a list. We will give you the names of the towns during the noon recess, so that there won't be any mistake about them.—A. Very well.

Mr. CAMPBELL. You are not to pick out the towns. We want representative towns.

Mr. KELLOGG. Oh, certainly. Rome was one of them.

Q. Do those records also show the margin of profit at these towns?—A. I am not sure about that.

Q. You have records showing those facts?—A. But I doubt if we would keep a record showing the margin. We would keep a record of the movement of prices, but not a record of the margin.

Q. The department here in New York furnished us the margin of prices of all the leading towns and territories back as far as 1902—the margin of profit, I mean.—A. I don't know about that. Those sheets which the margin is shown on are only movable sheets, which we generally destroy after we have made a change in price, but the permanent price——

Mr. ROSENTHAL. That is the testimony in this case, Mr. Kellogg, I think, too.

Q. Yes; but after the original reports are sent in they are tabulated in Mr. Bemis's office, and Mr. Bemis's office keeps a permanent record?—A. I don't know anything about that.

Q. We have them as far back as 1902, haven't we?—A. I don't know anything about that.

Q. Now, if it is a fact that the freight rates are the same, or practically the same, at Atlanta and Rome, Georgia, and that the

8631 price decreased in Atlanta to 8 cents, and remained at 12 cents at Rome, 4 cents a gallon more, you wouldn't say that difference was caused by the decrease in the price of crude, would you?

Mr. ROSENTHAL. Let us find out what the fact is at corresponding times first. What is the use of speculating on that?

A. I don't see what is the use of speaking in a speculating way on a proposition. When we verify these figures I can then answer those questions.

Q. But the price of crude would affect the price in Rome?—A. It would; yes; that stands to reason.

Q. There is no reason why the oil should be any higher in Rome than Atlanta, is there, unless there is competition?—A. There might be some local conditions that would explain those things.

Q. Local conditions of competition?—A. No; sometimes, strange to say, the merchants in a town will oppose our reducing the price.

Q. I know; but those are not conditions of cost.—A. Well, I say we might order a reduction at a town and our agent would write back that "the merchants here don't like this at all, because it is going to force the retail price down; they say they would much prefer you would let the price stay right where it is." We have had several cases of that kind.

Q. It is a fact, isn't it, that there was a competing company in Atlanta at that time?—A. I suppose there was. There has rarely been a time when there wasn't one.

8632 Q. And that was the reason it was reduced in Atlanta?—A. I will not answer that question until I look up that information. I can't say now.

Q. I show you your testimony on page 8352 in relation to the price at Augusta. You there state that your price, in January, 1898, was 8 cents; that it advanced to 8½ cents, where it remained the balance of the year.

Mr. CAMPBELL. That is right.

Q. Is that correct?—A. That is what I testified to.

Q. What was the price made in 1897?—

Mr. CAMPBELL. I have that here, Mr. Kellogg.

A. I said my record didn't go back. My answer is——

Mr. CAMPBELL. He didn't testify to it.

WITNESS. I don't seem to go back of 1898.

Mr. KELLOGG. Let me see it. Have you got the whole year?

Mr. CAMPBELL. (After searching among papers.) I must have left it over at my office.

Q. You don't know what the price was in 1897?—A. No. The only record I have of prices at Augusta is the one I read from.

Q. Now, did you mean by your testimony that the competition of Crew, Levick & Company was not the cause of the reduction of price in Augusta?

Mr. ROSENTHAL. By his testimony where, in what connection?

Mr. KELLOGG. On this page 8352.

A. Well, I say the facts are that our price January 1, 1898, was 8 cents, and it was advanced in July to 8¼. That was in 1898.

8633 Q. Now, wasn't the cause of the reduction in Augusta the fact that Crew, Levick & Company were selling there?

Mr. ROSENTHAL. The cause of what reduction?

Mr. KELLOGG. From previous prices.

A. I said there the price advanced.

Q. Wasn't the 8 cents a reduction from previous years?—A. That is, in 1897 the price had been higher, you mean?

Q. Yes; or 1896.—A. I couldn't tell you; I would have to look that up.

Q. Wasn't 8 cents a low price?—A. Well, that would depend altogether on the price of crude.

Q. I ask you if at that time 8 cents was not a low price in Augusta?—A. I couldn't intelligently answer that question without looking up the general markets, the primary markets.

Q. You don't know?—A. No.

Q. Isn't it a fact that at the other towns around Augusta—Rome, Spartanburg, Greenville, Anderson—the price during that time was from 10 to 11 cents?—A. I would have to look up those records. I don't know. You should bear in mind that Augusta has a lower freight cost, in my recollection, than any of the towns you have mentioned, and I think they get their oil from the seaboard; they did at that time.

Q. So does Anderson, doesn't it?—A. No, I don't think it did.

Q. Don't Spartanburg, and Greenville, and Rome?—A. Well, I should have to look that up. It wouldn't do to say on those matters——

Q. You don't know?—A. Why, 1898. I couldn't keep that thing in my head ten years.

8634 Q. Savannah gets its oil from the seaboard, of course?—A. Yes.

Q. And if Augusta gets its oil from the seaboard, it gets it through Savannah, doesn't it?—A. How is that now?

Q. If Augusta gets the oil from the seaboard, it comes through Savannah, doesn't it?—A. I wouldn't say on that, now, on oath, unless I looked it up.

Q. Don't you know?—A. It would naturally seem to be the proper channel.

Q. Yes; that is the seaboard point nearest Augusta.—A. But to say positively I would have to look it up.

Q. There is no reason why Savannah should have a higher price than Augusta, is there?—A. No.

Q. Isn't it a fact it was 11 cents during that same time in Savannah?—A. I don't know that. No; I don't know about that. I have no record with me on that.

Q. I show you some tank-wagon tickets which were procured from Spartanburg, South Carolina, 1897. Are those like your tank-wagon tickets [handing witness bunch of tickets]?—A. Yes; that looks like them—the majority of them. I see there are two or three in there that are not regular.

Q. Oh, yes; they are not confined to Standard Oil tank-wagon tickets; they are all sorts.—A. Yes. That is January, 1897.

Q. Have you examined, Mr. Collings, the schedule of prices in the years 1897 to 1905, inclusive, in various towns in your territory or the territory of the Standard Oil of Kentucky, published in the

8635 report of the Bureau of Corporations?—A. I don't think I have ever seen a copy of that report; therefore I have never examined the record.

Q. Will you look up and see the various prices in Augusta 1896

to 1907; also in Rome, Spartanburg, Greenville, and Anderson?—A. Yes, sir.

Q. Have you the prices in Montgomery, Alabama, for the years 1897 and 1898?—A. I feel quite sure I have not, but I will examine my record again and see. (After looking through papers.) No; I haven't any prices at Montgomery.

Q. Do you remember the Dixie Oil Works?—A. Yes.

Q. What time did your company buy the Dixie Oil Company?—A. I do not recall the date.

Q. Where was it doing business when you bought it?—A. It had stations at four or five points—I can't recall them—or three or four.

Q. Savannah, Georgia?—A. I am of the opinion that I wasn't looking after the business at Savannah in the years the Dixie Oil Company was in business there.

Q. Did it have a station at Montgomery, Alabama?—A. I am not sure, but I think they did have.

Q. In 1898 it was selling oil at Montgomery, wasn't it?—A. If they had a station there, they were. I can't recall just what dates they were there, but I think they were there at one time, at a period when they were doing business in the South.

Q. Is it not a fact that, prior to the purchase of the Dixie Oil Company by the Standard Oil, and in the years 1897 and 1898, it
8636 was doing business at Montgomery, Alabama, and that you reduced the price of oil in Montgomery to 6½ cents a gallon?—A. That is so extremely low, Mr. Kellogg, that it hardly seems possible, and I would have to examine our records before I would answer definitely on that point.

Q. Did you not reduce the price from 11½ cents a gallon to 6½ cents a gallon during the years 1897 and 1898 at Montgomery?—A. I would have to examine the record to ascertain that.

Q. Within a period of five or six months?—A. I would have to look that up.

Q. Where is Gadsden, Alabama?—A. That is north of Birmingham; it is in the northeastern part of the State of Alabama.

Q. It is north of Montgomery?—A. Oh, quite a distance.

Q. The oil for Montgomery and Birmingham and all these places came from Whiting, did it not?—A. That is another thing I would have to look up before I answer.

Q. Isn't that your recollection?—A. No.

Q. Where did it come from?—A. I don't know. It is too indefinite, too vague.

Q. Isn't it a fact that during all your time, prior to the time you were getting oil from the Gulf, that substantially all your supply came from Whiting, Indiana, except a little along the Atlantic seaboard?—A. That is too indefinite. I would have to look that up, Mr. Kellogg. I can give you the actual facts.

Q. Is it not a fact, also, that during the same time that the
8637 prices were so low in Montgomery they were 11½ and 12½ cents per gallon in Gadsden and other towns around Montgomery,

Alabama?—A. As I answered in regard to Montgomery, I would have to look up our records.

Q. Will you look that up?—A. Yes. If you will give me a memorandum I will investigate it.

Q. The stenographer will write it off.—A. We will have a copy and I will look that up.

(A recess was here taken until 2 o'clock p. m., at which time the cross-examination was resumed by Mr. Kellogg.)

Q. Mr. Collings, you testified that, in 1907, the price at Augusta was 10 cents, at Thompson 11½, and Waynesboro 11½, I think; that the difference was on account of freight about that amount. Is that correct [handing witness copy of his testimony]?

Mr. CAMPBELL. Also the increased cost of marketing.

WITNESS. Yes, I testified to that; also that these towns were smaller and the cost of marketing at such points was greater.

Q. Yes, but you said the difference in freight was about that amount, didn't you?—A. Of course, I hadn't the freights before me at that time, but that is my recollection.

Q. Now, the difference in freight wasn't anywhere near that amount, was it?—A. I don't know, I haven't looked it up.

Q. Do you know what the freight rate to Augusta was?—A. From what point?

8638 Q. From Savannah, Georgia.—A. I do not.

Q. Or to Waynesboro or Thompson?—A. I would have to get the record on that; I couldn't say offhand.

Q. Well, it is in evidence in this case, furnished by the Standard Oil Company.—A. Then, we would have to find out further, of course, whether those points both drew their oils from Savannah.

Q. That appears also in the exhibit furnished by the Standard Oil, that they do, Petitioner's Exhibit 327.

Mr. ROSENTHAL. That what?

Mr. KELLOGG. That Augusta, Waynesboro, and Thompson all get their oil from Savannah, and it gives the freight rates from Savannah to each one of these places.

Mr. ROSENTHAL. Let us see that.

(Volume of exhibits handed to Mr. Rosenthal.)

Q. Now, Waynesboro and Thompson are towns which you selected for your illustration, are they?—A. Well, I think I must have selected them; I suppose I did if I mentioned them. I don't know whether you originated that or whether I did.

Q. Mr. Rosenthal asked you about it.—A. That was the direct examination, was it?

Q. Yes.—A. Well, I didn't know which——

Q. They are very close to Augusta, are they not?—A. I should say 50 or 60 miles, somewhere in that neighborhood.

8639 Q. In the neighborhood of 40 miles, aren't they?—A. I said about (I just guess, you know) 50 or 60 miles, somewhere in that neighborhood.

Q. Now, other towns around in that vicinity, and in the State generally, had a very much higher price, hadn't they?—A. I have not looked it up.

Q. You haven't looked up those towns?—A. I haven't looked them up.

Q. How large a place is Waynesboro and Thompson?—A. They are about the same size. As a rough guess I would say they are 1,500 to 2,000; I think that is about the population.

Q. While the market at Augusta was 10 cents, at the same time, in 1907, it appears the market at Savannah was 11 cents. That is not due to any additional cost of marketing or freight, is it?—A. No; I imagine not.

Q. As a matter of fact, the oil came from Savannah?—A. Yes.

Q. And would have no freight except the ocean freight, would it?—A. That was in 1907?

Q. Yes.—A. Yes.

Q. Then, can you explain the difference between the market at Savannah and Augusta?—A. The only explanation——

Mr. ROSENTHAL. When?

Mr. KELLOGG. In 1907, what he was talking about.

WITNESS. If there was such a differential, it was due in all probability to the fact that we had to maintain that price to hold our business.

8640 Q. Competition, yes. Now, it appeared by the same evidence in this case that the price at Bainbridge, Georgia, was 13 cents; at Bowersville, 14 cents; at Dawson, 14 cents; at Fort Gaines, 14½ cents, and at many other places all the way from 12 to 13½ cents, through Georgia. Was the difference there due to competition?—A. No, I should say there must be a differential quite considerable in freights, because if you look at Bainbridge——

Q. There wouldn't be 3 and 4 cents a gallon difference between that and Augusta, would there?—A. No, I wouldn't say that.

Q. There wouldn't be half a cent difference?—A. Yes, I should say more than half a cent, I mean roughly estimating. You look at the map and you will see that there is quite a difference from the source of supply of the Standard Oil Company. Bainbridge is in the southwestern portion of the State.

Q. When did the Standard Oil Company of Kentucky commence to get oil from Texas?—A. I couldn't say offhand.

Q. Well, about?—A. It was about the time that the production around Beaumont became excessive and they began to refine oil down there.

Q. You commenced to get it about 1906, didn't you?—A. Oh, it must have been back of that quite a bit, you know. I think they began refining oil in Texas in 1902 or 1903.

Q. Of what company did you get most of it?—A. We got the most of it from the Security Oil Company.

8641 Q. And it was shipped to what place?—A. Originally it was shipped direct, in tank cars, to the points where it was wanted.

Q. Then it was shipped to Pt. Chalmette?—A. You say "then." What do you mean by "then?"

Q. After you quit shipping it by tank cars.—A. Yes. We shipped it to Pt. Chalmette in bulk boats.

Q. What did your company pay for the Dixie Oil Company?—A. I couldn't tell you now.

Q. Have you any idea?—A. No.

Q. Your books will show, won't they?—A. They would, yes.

Q. Will the books show the amount of profit of the Dixie Oil Company?—A. You mean after we got it?

Q. Yes.—A. I imagine they would, yes.

Q. In other words, the accounts of the Dixie Oil Company were kept separate so you could tell the profit of that company?—A. I have no doubt but what they were. I can't say positively without having the books to refer to.

Q. I think you testified the other day that when you bought many of these companies you kept the accounts separate so you could find out how they were running?—A. I have just said that in all probability we did so.

Q. Those books would show the gallonage sold by each one of these independent companies that you own?—A. They should, yes, sir.

Q. In each place?—A. Yes.

Q. The profit?—A. Yes.

8642 Q. The cost of marketing?—A. Yes.

Q. Freight?—A. Yes.

Q. And prices sold at?—A. Yes.

Q. And the gain or loss, or profit or loss?—A. Yes.

Q. Now, that is true of all these so-called independent companies which your company bought and ran for any length of time, isn't it?—A. Yes. That is, you mean it is true that that record was kept?

Q. Yes.—A. That is right.

Q. And your books would show those facts?—A. Yes.

Q. Now, during the time that you have been familiar with the business of the Standard Oil Company of Kentucky, your company has purchased a large number of these so-called independent companies, haven't they?—A. I don't know what you mean by "a large number." That is a relative figure, you know.

Q. Well, a good many independent companies and peddling concerns.—A. Quite a number.

Q. That is, either purchased during your connection or previously purchased and operated during your time?—A. Yes. There were some purchased prior to my time that were operated after I took charge.

Q. Those that were purchased before your time and during your time and operated any length of time were a large number, weren't they?—A. I don't know what you would call large, you know. I couldn't say.

Q. Well, several hundred concerns?—A. Oh, no, indeed; I should not.

8643 Q. Have you ever looked over to see how many there were?—A. Oh, I haven't looked over specially with the view of counting them up or anything of that sort, but in a general way I have an idea that there wouldn't be a hundred—several hundred.

Q. You think it would not be several hundred?—A. No, I don't think that is——

Q. Including, I mean, the peddling concerns.—A. Yes, including anything. I don't think it would be anything like that.

Q. Most of these concerns that you so purchased and afterwards operated were concerns that were doing business in competition with you when you bought them, weren't they?—A. Well, most of them, of course—they must have been in business, and I don't know to what extent they were competing with us.

Q. Well, most of them sell oil in competition with your market?—A. Yes. That remark, I think, is all right; most of them were.

Q. Now, since about 1906 you have ceased to operate all these concerns, haven't you?—A. Yes, we have ceased to operate them, but the dates I couldn't give you without looking up.

Q. Along during the latter part of 1905, 1906, and 1907, you liquidated them all, didn't you?—A. I think you can safely say we haven't had any in the last three or four years.

Q. Well, two or three years would be more accurate, wouldn't it?—A. Well, two or three.

8644 Q. Practically all those concerns have been wound up and liquidated, haven't they?—A. Yes.

Q. And their assets turned over to the Standard Oil Company of Kentucky?—A. Yes.

Q. And practically all of that was done some time during the year 1906, wasn't?—A. No; I think there were more of them in 1905, probably.

Q. The latter part of 1905?—A. The majority of them were closed in 1905.

Q. Now, your books will show, as you say, whether they made a profit or whether they made a loss?—A. Yes.

Q. Those companies?—A. Yes; they should.

Q. By the way, the Brooks Oil Company was one of those, wasn't it?—A. Yes.

Q. I forgot to ask you about that. Where are those books kept that will show these facts?—A. In Covington, Kentucky.

Q. Will you produce those books, records, and papers showing the gross earnings, the expenses, net earnings, the volume of business done, and the prices charged for oil sold, of each one of those companies?—A. I will have to consult my attorneys about that.

Q. You could have that statement made up, couldn't you?—A. I could if my attorneys desire me to, if they think it is proper for me to do it.

Mr. ROSENTHAL. And the books were there?

WITNESS. And the books were there. We could get the information for you.

Q. You have such accounts, you say?—A. Yes, but I don't

8645 know how far back you want to go. We couldn't go back indefinitely, I imagine. I don't know.

Q. You have got your books back a good many years, haven't you?—A. I don't know, I don't keep the books.

Q. They are kept under your control, aren't they?—A. They are kept under my control, but I don't go up and examine them every once in a while to see what books they have got.

Q. Of course not, but you have occasion to consult the bookkeepers occasionally, haven't you?—A. Not about any antique thing like those questions you have got there.

Q. Do you call a company that was liquidated two years ago antique?—A. No, I do not.

Mr. ROSENTHAL. As a business proposition, yes; as an ornamental proposition, no.

Q. You have been testifying about a great many things that occurred a good many years ago.—A. Yes, but I wouldn't say that we keep records of anything like that, say fifteen or twenty years, or ten years, even. We would have such a stack of stuff we wouldn't have place to store them.

Q. Have you any reason to suppose your books do not go back to 1900?—A. No. Roughly, I would say they ought to.

Q. 1897 and 1898 and 1896?—A. As I don't keep them, I couldn't say, Mr. Kellogg.

Q. Your bookkeepers wouldn't destroy them without your authority, would they?—A. Well, I don't know about that. The treasurer is the man responsible for the books; he is an official of the company, he isn't a bookkeeper.

8646 Q. He is under you, isn't he?—A. In a general way; he is under the directors, too.

Q. He is under you, too, isn't he?—A. He is an officer, of course, that is subordinate to me.

Q. Would he destroy the books of the Standard Oil Company of Kentucky without your authority?—A. Well, I don't know. I had no occasion to raise that point.

Q. Well, have they been destroyed, or are they in your offices, running back to 1896?—A. I couldn't tell you without examining. I don't know.

Q. Will you please produce the books, records, and papers of the Standard Oil Company of Kentucky, showing gross earnings, the expenses, the net earnings, the volume of business done, and the prices charged for oil sold, of each of the following companies, from 1897 to 1906, inclusive, together with all other companies during said time which were operated by the Standard Oil Company of Kentucky: White's Golden Lubricator Company, of Cincinnati, Ohio; Protection Oil Company, of Cincinnati, Ohio; Star Oil Company, of Cincinnati, Ohio; West End Oil Company, of Cincinnati, Ohio; Sunlight Oil & Gasoline Delivery Company, of Cincinnati, Ohio; Relief Oil Company, of Cincinnati, Ohio; Alabama Oil Company, of Birmingham, Alabama; Southeastern Oil Company, of Birmingham, Alabama; People's Oil Company, of Atlanta, Georgia; Commercial

Oil Company, of Atlanta, Georgia; Consumer's Oil Company, of Macon, Georgia; Flournoy (peddler), of Macon, Georgia; Dixie Oil Works, of New Orleans, Louisiana; C. P. Wagner Co.;
8647 Crystal Oil Company, of August, Georgia; Argand Refining Company, of Marietta, Ohio; Paragon Oil Company, of Decatur, Illinois; Hamilton Oil Company, of Terre Haute, Indiana; Home Safety Oil Delivery Company, of Terre Haute, Indiana; Banner Oil Company, of Springfield, Illinois; Kercher Bros., of Springfield, Illinois; Springfield Oil Delivery Company, of Springfield, Illinois; Domestic Oil Company, of Indianapolis, Indiana; Brooks Oil Company, of Indianapolis, Indiana; Capital City Oil Company, of Indianapolis, Indiana; Southern Oil Tank Line, of Louisville, Kentucky; C. F. Warner (peddler); Vincennes Oil Company, of Vincennes, Indiana; Home Safety Oil Company, of Jeffersonville, Indiana; Memphis Oil Company, of Memphis, Tennessee?

Mr. ROSENTHAL. You mean as a part of your cross-examination of this witness?

Mr. KELLOGG. Yes.

Mr. ROSENTHAL. I have no objection to your cross-examining him as long as you want to. I don't want to be charged up with time that ought to be charged against you for putting in your direct case.

Mr. KELLOGG. He testified that these companies made profits. I want to find out whether they made profits or not.

Mr. ROSENTHAL. The time will come, you know, when you will say we have been taking all these days in putting in our case. It will be your case.

Q. Will you?

Mr. ROSENTHAL. Why, he will submit that to us, Mr. Kellogg, and we will pass upon it.

8648 Q. Now, Mr. Collings, you were subpœnaed to produce certain letters next Monday at 10.30. Do you wish to state now whether you will produce them or not?—A. I haven't had an opportunity to discuss the matter with the gentlemen—with my attorneys; I haven't had an opportunity.

Q. All right. And the data that you were to look up about those prices, you haven't had a chance to do that?—A. No; because the names of the places haven't really come to us yet.

(Mr. Kellogg stated that Mr. Chase left the memorandum at Mr. Rosenthal's office during the noon recess.)

Mr. ROSENTHAL. I didn't go to my office at all during the noon hour.

WITNESS. We were looking for them, and I asked Mr. Campbell just as we came out if he had seen anything of the sort.

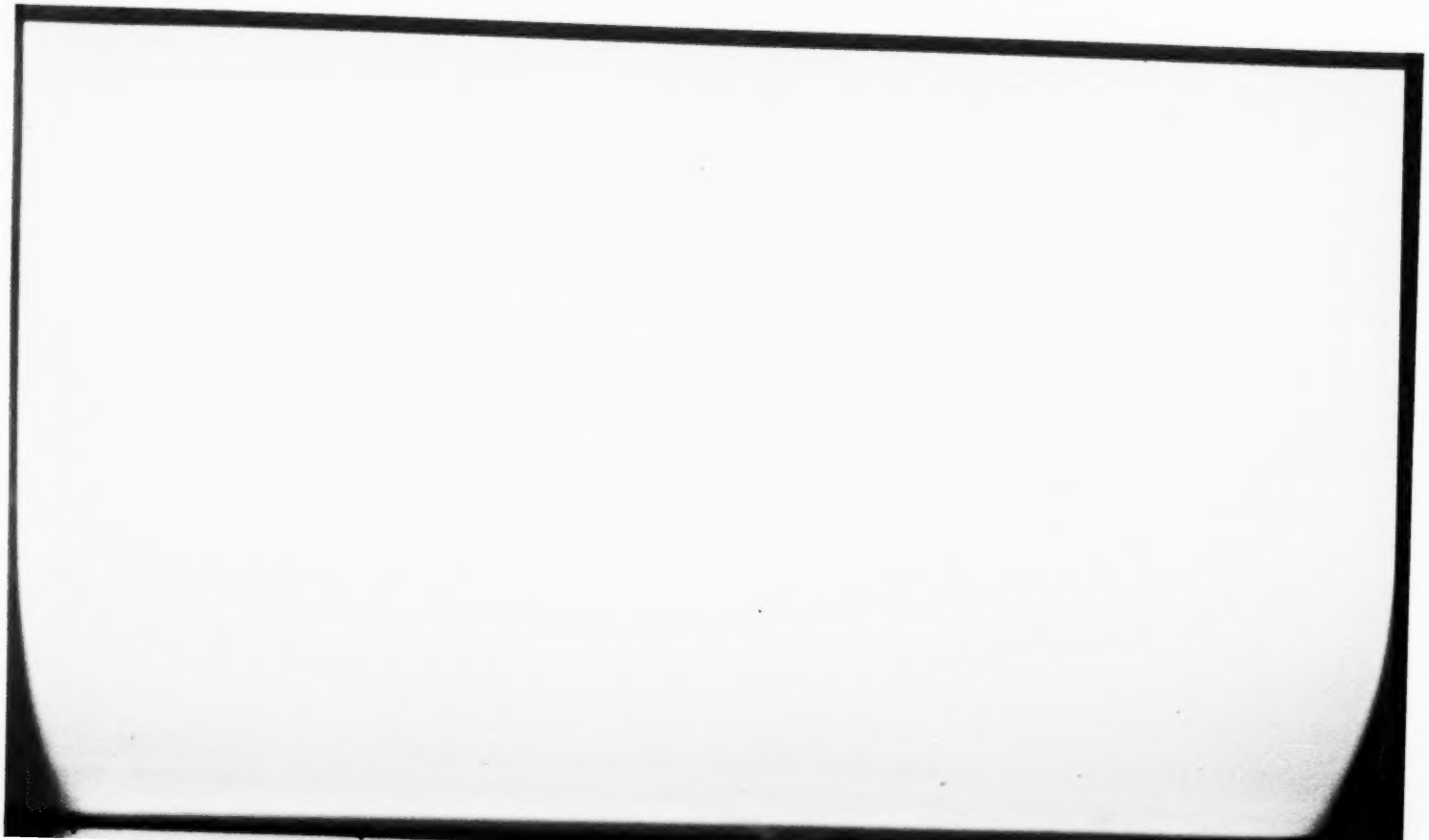
Mr. ROSENTHAL. I didn't go to the office since noon at all.

Mr. KELLOGG (after talking with counsel for defendants). Then, Mr. Collings, you may be excused until Monday at 10.30.

WITNESS. Thank you.

The EXAMINER. Mr. Collings is excused until next Monday, is he?

Mr. KELLOGG. Yes.

The EXAMINER. For further cross-examination?

Mr. KELLOGG. Yes.